THE LIBRARY OF WORLD AFFAIRS

Editors:
GEORGE W. KEETON
and
GEORG SCHWARZENBERGER

Number 1

MAKING INTERNATIONAL LAW WORK

MAKING INTERNATIONAL LAW WORK

By

GEORGE W. KEETON, M.A., LL.D.

Dean of the Faculties of Laws, University of London and University College, London; Professor of English Law in the University of London; Principal of the London Institute of World Affairs

and

GEORG SCHWARZENBERGER, PH.D., DR. JUR.

Reader in International Law in the University of London; Sub-Dean of the Faculty of Laws, University College, London; Director of Studies of the London Institute of World Affairs

SECOND EDITION

Published under the auspices of
THE LONDON INSTITUTE OF WORLD AFFAIRS

LONDON
STEVENS & SONS LIMITED
1946

First published in 1939
Second Edition in 1946
by Stevens & Sons, Limited,
119 and 120 Chancery Lane,
London, W.C.2.

Printed in Great Britain at
The Baynard Press, Ltd., London.

CONTENTS

PREFACE

MAKING INTERNATIONAL LAW WORK is a task that may be approached in a variety of ways. It is possible to take a purely negative view of the matter and to hold that to subject the conduct of States to legal scrutiny is sheer hypocrisy. It is equally feasible to be more positive but to resign oneself to the fact that international law has been limited to the regulation of matters of secondary importance and that it is likely to remain similarly restricted in the future. It is then not difficult to prove that, for instance, in spheres such as diplomatic immunity, extradition or State responsibility, this legal system works moderately well. Or, it is possible to point to the gradual expansion of the international law of peace and to argue that, in good time, the aspiration of the rule of law in the international sphere will be realized but must on no account be unduly rushed. In support of this view, attention may be drawn to the remarkable enrichment of international law by the practice of international Courts and tribunals. From this fact it may be deduced that, in due course, these international judicial institutions will contribute no less to the subconscious growth of international law than municipal courts have done in their corresponding sphere over centuries in the Common Law countries. Others may suggest that the United Nations should be urged to embark on a comprehensive codification of international law, though the experience gathered in this field under the ægis of the League of Nations is not exactly encouraging.

Yet it may be argued that all these avenues to the rule of law in inter-State relations are pitifully inadequate to meet the challenge presented to our generation by the invention of atomic weapons and by the phenomenon of

total war, and that nothing short of world government can give a secure basis to international, or rather world, law. If this line is taken, as the authors of this book thought it right to do, two courses appear to be open in order to provide an answer to this riddle of our age. Either the present unsatisfactory stage of international law is taken for granted, and attention is concentrated on the most suitable forms of world government, or the main task is seen to consist in analyzing the inherent limitations of international law within a system of world power politics and in focusing discussion on the major stumbling blocks to the further development of international law, that is to say, the national sovereignty of the world powers. In the present state of the discussion, the former alternative would appear to be premature. The main theme of this book, therefore, is the thesis that, short of some minimum of world federation, the world powers may maintain even for a prolonged period an uneasy equilibrium between themselves, but that the rule of law between nations and functional international integration by means of international institutions must remain as precarious as they were during the pre-1914 period or during the interval between the First and Second World Wars.

Whether it is possible to bridge the gap between our existing world society and a world community proper, will primarily depend on the United States of America and the U.S.S.R. They will have to make up their minds whether they conceive their destinies to lie in the revival of outworn conceptions of political, economic and ideological imperialism or whether they can evolve a common denominator for their different ways of life. At this stage, a unique opportunity is offered to the British Empire and Commonwealth to give the lead both to these Powers and to the smaller nations by its own example, that is to say, by the successful combination of the ideals of individual freedom and social security. If the dangers of the post-war period were faced in such a constructive spirit, it

should not prove beyond human strength for the world powers—to use the language of the Crimea Declaration—to ' build in co-operation with other peace-loving nations a world order under law, dedicated to peace, security, freedom and the general well-being of all mankind.'

Those who may be inclined to call such an endeavour utopian, may find that the price of their particular brand of ' realism ' will be a third world war with all that, in an age of cosmic warfare, this threat implies. The same critics probably took the same view of the proposals made in the first edition of this book in 1939 to build such a federation around the nucleus of an Anglo-French Union, until, in 1940—when it was too late—they woke up to hear Mr. Churchill advocating this proposal. To-day, responsible statesmen are fully aware of the fact that the problem can be solved if at all only on a world scale. This is one of the few hopeful signs in a world in which the coming major issues of world power politics are already clearly discernible, and the new world alignments are already in the process of formation.

It may be advisable to state expressly that it is not the purpose of this book to provide a systematic survey of the rules of international law, a task which may be left to the standard treatises in this field. As has been pointed out before, the main task which the authors have set themselves is to define the place of international law in world society and in a system of world power politics in disguise. It is hoped that a book of this kind may be helpful to students of international law and relations—and, in particular, to those who wish to prepare themselves for the newly established University of London Diploma in International Affairs, for which the London Institute of World Affairs offers full teaching facilities. By first making themselves acquainted with the social background of international law, students may be better equipped for their subsequent systematic and analytical work. In addition, the book appeals to the general reader who is

less concerned with technical detail than with the scope and functions fulfilled by law in the inter-State system.

We have to express our sincere thanks to Miss Monica McClintock and to Major L. C. Green who have shared in the task of reading the proofs. Major Green has also been responsible for the preparation of the index.

G. W. K.
G. S.

UNIVERSITY COLLEGE, LONDON,
January, 1946.

CHAPTER I

THE DEVELOPMENT OF INTERNATIONAL LAW

'International law was not crystallized in the seventeenth century, but is a living and expanding code.'
(*In re* Piracy *Jure Gentium, per* Viscount Sankey, L.C.—1934.)

INTERNATIONAL law, as we know it, is the product of the experience gained in international affairs in the last three centuries of European history. It has its origin in the breakdown of the medieval system and, therefore, if we are to study it in proper perspective, it is necessary first to look briefly at the medieval system, with its conception of a united Christendom, and then to examine the reasons which led to its replacement by the more modern system of international organization. The medieval order, which we term Christendom, can be regarded as a pyramid at the summit of which were the Emperor and the Pope. All free men were regarded as being linked individually to some higher authority, culminating eventually in that of the Emperor and the Pope.

So we have on the one hand a system of ecclesiastical courts, from that of the least important archdeacon to the papal curia at the other extreme. And so also on the secular side, we have a similar hierarchy of feudal courts, beginning at one end with the court of the Lord of the Manor and terminating with the Emperor's court before which his tenants in chief could alone be litigants. This was not always a rigorous concept, and as the Middle Ages drew to a close, the authority of the Emperor over his tenants in chief, except perhaps in Germany and Italy, became shadowy in the extreme. For example, it is doubtful whether at any time after the Norman conquest any English king, except perhaps Richard I during captivity, ever acknowledged the overlordship of the Emperor. Nevertheless, on the religious side, no English

king denied the ecclesiastical supremacy of the Pope until the Reformation and, therefore, what the conception of a united Christendom lost on the secular side, it retained more tenaciously on the religious side. The existence of this conception affected the ordinary citizen's way of facing political problems and tended to emphasize the unity of western civilization at the expense of purely national cultures. As Mr. Bernard Shaw has acutely pointed out in his preface to *St. Joan*, society was divided horizontally rather than vertically, and a merchant in England tended to feel greater identity of outlook with a merchant of Italy than with a labourer or even a feudal magnate of his own country. The same was true of other orders in society, more particularly of scholars, clergy and feudal knights. This unity of civilization was emphasized by the common use of Latin, not only for the purposes of scholars, but as a means of communication between Christian Princes. It was also evidenced by the frequent exchanges of scholars between the countries of Western Europe, by the ease with which a person could leave his own country and enter the official service of a neighbour, or even of a rival, by the common body of Catholic doctrine, affecting vitally the approach of all students and statesmen to political problems, and by the reception of Roman Law as the common law of the countries of Western Europe, to which England alone furnishes an exception. Furthermore, the Middle Ages were essentially a period of limited authority. The secular authority of the feudal courts was limited in two ways. Firstly, there was a similar organization of ecclesiastical courts administering the law, which touched the ordinary citizen at many of the most important points of his life and the authority of which formed the most powerful obstacle to the extension of the power of the secular courts during this period.

Secondly, there were mercantile courts whose jurisdiction was based upon charters secured from secular rulers. They administered a mercantile law which did not vary

materially wherever it was administered in Western Europe, and which, therefore, affords an illustration of a common private law, administered by courts whose ultimate source of authority was not the local sovereign but the common consent of those who submitted themselves to their jurisdiction. Again, even within the sphere of feudal law, the action of powerful kings was conditioned by the existence of a body of feudal custom which required the consent of the tenants to whom it applied before it could be changed. Thus, customary law greatly curtailed the power of the kings to impose fresh taxes, to initiate important internal changes, or even to embark upon foreign adventures. Since the kings had not sufficient income to maintain standing armies, they necessarily relied mainly upon feudal levies, and the consent of the tenants in chief was necessary before these could be employed overseas. In England, two of the strongest of our medieval kings, Edward I and Edward III, both sought unsuccessfully to override this last important limitation upon their authority.

It will be evident that this was essentially a static society in which every free man was assigned a place and so, as one distinguished writer has pointed out, the condition of the lordless man was a most unhappy one; for he was outside the entire system and so was not only not entitled to protection, but was also normally unable to earn a living. His position, in fact, was as much an anomaly as that of the stateless person to-day. The difference between medieval and modern society is this: the binding element to-day is allegiance to a sovereign State, whilst in medieval times it was a feudal contract in which service was offered on the one side in return for protection on the other, and this contractual relationship was regulated by a well-established body of custom to which both sides could appeal in case of dispute. This contractual conception of society received renewed emphasis from Catholic philosophy

with its underlying assumptions of personal dignity and of ordered freedom, alike for king and tenant.

THE BREAKDOWN OF THE MEDIEVAL ORDER

This conception of a loosely organized European order, based in the last resort on contract, broke down in the sixteenth century under the impact of the combined forces of the Renaissance, the Reformation and the underlying social and economic trends. For a period, it was replaced by an atomized society in which the constituent units had no cohesion and which, as a not unnatural result, were in a state of intense activity and conflict. Among the chief causes of the breakdown of the medieval system were the following:

(1) The decline of the baronage. The first indication of this may be perceived in the crusades which not only exhausted for a time the military power of the feudal lords, but also threatened their financial security, since in many cases a baron was compelled to mortgage his resources in order to equip one of his expeditions. Moreover, during his absence the merchant class grew in number and importance, and even the crusaders themselves stimulated new wants which this class supplied. When, therefore, the crusades ended, the importance of the baronage had diminished and that of the merchants had increased. Moreover, in all the countries of Western Europe the baronage ultimately resorted to civil wars for what were, according to modern ideas, essentially selfish ends. These internecine struggles led ultimately not only to diminution in numbers of the barons as a result of periodic proscription, but also to the exhaustion of their military power. When, therefore, these civil wars were at last ended, there was a marked tendency, even among the older nobility, to turn to more peaceful pursuits, sometimes, as in England after the Wars of the Roses, in temporary alliance with the new monarchies.

(2) By the sixteenth century the medieval methods of waging warfare by means of feudal levies were becoming obsolete. The long bow and the cross bow had both challenged the invulnerability of the fully armed knight, but the invention of gunpowder rendered feudal armies obsolete and gave the power to raise armies independently of the baronage to national leaders, if they had the means to do so. Therefore, the wars of the sixteenth century were fought mainly by mercenary armies, and this is one reason for their brutality against the civilian population.

(3) Feudalism was not only a system of political organization, it was also the entire basis of community life in the Middle Ages. It was based on land cultivation, carried out mainly by unfree labour and it assured the self-sufficiency of very small territorial units, that is to say, of the manors. By the sixteenth century villeinage had declined. The creation of new wants and a higher standard of living necessarily implied that the manor could no longer hope to be self-sufficient, whilst the mercantile class, which in some countries in Western Europe and especially in England was rapidly assuming political importance, was outside the sphere of feudalism altogether. The discovery of the New World and the consequent expansion of trade made the merchants the wealthiest class within the community and caused the baronage, except in so far as it remained in touch with the new development, proportionately to lose power.

(4) Another aspect of the Renaissance was a widespread renewal of interest in the study of Roman Law and a fresh reception of it into the common law of the countries of Western Europe, for instance, the receptions of Roman Law in Scotland and in Germany which took place at this period, and it has been suggested that a reception in England was averted only by a narrow margin. Roman Law with its theories of absolute

ownership (*dominium*) and its tradition of imperial rule made newer theories of absolute monarchy popular and so became acceptable to the new rulers in the chief States of Western Europe.

(5) The Reformation ended the conception of a united Christendom on the religious side. Thus, by removing that aspect of unity which had proved most tenacious, it destroyed the medieval basis of political organization. The reformers themselves accepted the authority of the secular rulers even in matters of religion, and the Peace of Augsburg in 1555 gave political recognition to this state of affairs. Here again, a new movement assisted in emphasizing the greatly increased authority of the territorial sovereign.

(6) Medieval philosophers had consistently emphasized the authority of Natural Law. They had identified it with the Law of God and regarded it as the higher law to which in the last resort the individual must give obedience, even if in doing so he came in conflict with local law. Ecclesiastical philosophers had found these ideas useful since they tended to exalt Catholic doctrine at the expense of secular authority. These restraints were now gone, and social and political philosophers took advantage of this to preach that the ruler was responsible to no one and need not keep faith either with other rulers or with his people. This changed philosophical outlook may be contrasted if the writings of St. Thomas Aquinas are placed by the side of those of Machiavelli. In the Middle Ages, for example, the sanctity of treaties, which was greatly emphasized, had depended upon the oath of the contracting parties. The breach of a treaty was an ecclesiastical offence which might in the last resort involve excommunication and interdict. Now these penalties were ineffective. Moreover, medieval philosophy had sought to explain, not perhaps very successfully, the circumstances in which a just war could be embarked

upon. This restraint no longer existed in the sixteenth century, and in consequence still more wars were waged for selfish ends in circumstances of extreme brutality. In the Middle Ages there had been rules of warfare collected into books of chivalry, laying down the principles which were in general observed. There is an echo of these rules in Shakespeare's *Henry V* in Fluellen's discussion of the French attack on the boys and the luggage and of Henry V's massacre of his prisoners at Agincourt. It is evident that the baronage had a common interest to secure the observance of these rules, especially where they related to such matters as ransom, hostages and the character and functions of heralds and similar phenomena. This common interest had now gone, and it is therefore not surprising that there were excesses.

THE GROTIAN APPROACH TO INTERNATIONAL LAW

Eventually writers upon inter-State relations united to protest against the situation, exactly as they are doing in our time. Some wished to return substantially to the medieval position. Yet their efforts were as bare of result as must necessarily be the efforts of those who seek to-day to return to the nineteenth century position or even to the long past age of a law common to all Christian nations. Others accepted the existing international situation and sought to rationalize and to improve it. Prominent amongst these was Gentili. Born in Italy in 1552, he was educated at Perugia, then one of the most famous universities of Italy and possessing a law school of great distinction. After becoming a Doctor of Law, he was appointed to judicial office, but was compelled to leave the country because his family had embraced Protestantism. He came to England in 1580 and was appointed to lecture at Oxford, becoming Regius Professor there in 1587. His work on International Law was published immediately after the destruction of the Spanish Armada. It is relatively positivist in outlook, in the sense that it is based

primarily upon the usages of independent States, in contrast with the writings of the Spanish naturalists, many of whom were Jesuits. They regarded international law as still applying within a *civitas* or community under the dual authority of Pope and Emperor. In the *societas gentium* of Gentili there are many independent States following a law drawn largely from recent practice, whose binding force is based upon the consent of the members. It is true that Gentili also appeals to natural law as an auxiliary reason for the binding force of international law, since he is well aware of the extent of the sentiment in favour of natural law which survived in his day. But he is more positivist even than his better known successor, Grotius, who profited by the earlier labours of Gentili. The extent of the latter's positivism is illustrated by the fact that he even includes non-Christian countries in his community of nations, assuming their capacity for treaty relations. Like many who have written on international law before and after him, he attempts to grapple with the problem of the just war without reaching any really satisfactory conclusion.

Gentili, as we have seen, was a religious refugee; Grotius, who soon afterwards became known as the father of international law, became a religious refugee, too. Born at Delft in 1583, he was educated at Leyden where he early gave evidence of astonishing profundity of scholarship and acquired a great reputation. In 1598 he was made a member of the Dutch Embassy in France and in 1604 became Advocate-General of the Netherlands. In 1613 he came as Ambassador to England, and on his return entered into religious controversies in opposition to the Stadtholder, as a result of which he was arrested and imprisoned in 1618. His picturesque escape from prison in a huge chest for books which had been sent by his wife, has often been described. After his escape he took refuge in France and subsequently became Swedish Ambassador to France. His death in 1645 was due to

exposure following a storm at sea. His great work *De Iure Belli ac Pacis*, published in 1625, is one of the outstanding achievements of legal science, since it has proved the starting point for a modern science of international law. It exhibits notable resemblances to the work of Gentili and equally interesting differences. Whereas, however, the appeal of Gentili was local, that of Grotius was universal, and one reason for that has to be found in the difference in the dates of the two works. When Grotius wrote, most thinking persons in Europe were prepared to accept his fundamental assumptions. The book was written during the Thirty Years War, against the barbarism of which he protests in memorable terms. He wrote, too, when the disintegration of Christendom had become apparent to all. At the Peace of Westphalia in 1648 the States who were represented were admittedly sovereign and independent and negotiated upon a footing of legal equality. The former overlordship of Emperor and Pope had finally disappeared in European politics and with it the last hope of organizing Christendom upon the basis of Christian philosophy. The following appear to be some of the chief reasons for a general acceptance of the soundness of Grotius' work in the sphere of international law.

At the time of the publication of his book there had come to be recognized what was essentially ignored earlier, that war without limits in the last resort defeats itself. Its horrors, in fact, led to a general movement against the waging of wars. Hence States were prepared to accept within limits a doctrine which defined the conditions of their intercourse, reduced the occasions for a just resort to war and mitigated the severities of such wars when in fact they had broken out.

The unit of international law, for Grotius, is the sovereign, independent State. The individual is not an international person. Rights can be enjoyed only by States. Thus, international law from this point of view

simply emphasized the authority of the State over its subjects and so proved acceptable to rulers, who no longer admitted external and internal checks upon their authority. The law was thus based upon political reality. To have argued in favour of the establishment of some super-national authority, to take the place vacated by the Empire and the Papacy, would have condemned his work to failure. Grotius simply sought to do the best he could in the sphere of international relations in the conditions which he found existing around him.

The dominating method of Grotius is an appeal to State practice, allied to an acute and independent judgment which is founded upon an exhaustive study of international law writings, the classics of antiquity and the Bible. He is thus less positivist than Gentili. In fact, his work has always been regarded as a compromise between positivism and naturalism, and as a result it obtained support from both schools of thought.

Substantial portion of his law of peace are drawn from Roman Law, and this seemed essentially the appropriate method of constructing a new science to the Romanists who then dominated the law schools on the Continent.

It is a formal law, applying between States. It is not concerned with either the social structure of the State itself nor with the relations of the rulers of States to their subjects. Thus the identity of a State remains unchanged, even though its internal structure may suffer fundamental alteration as the result of revolution. Accordingly, it leaves State policy unhampered, both from the internal and the external points of view. Moreover, its basis is consent, and it assumes the legal equality of States in the sense of equal capacity for rights and duties, although politically there are manifestly the widest inequalities.

This system of law depends on certain underlying assumptions which will be more fully examined in later chapters, the chief of which are the following :

(1) The State is regarded as an organization possessing defined territory and the capacity to exclude the activities of other political organizations within that territory. This leads to the proposition that international law does not interfere in the internal affairs of States, and that States themselves should refrain from intervention in the internal affairs of other States, except in so far as this may be necessary to protect some fundamental interests of their own.

(2) States have legal equality, that is to say equal potentiality; and incongruity is avoided because this roughly corresponds to the actual position. International law only applies to political units which exercise control over a considerable number of individuals, who preserve their existence in international relations by the devices of power politics.

(3) States which are subject to international law have a common outlook which is based upon common tradition, that is to say, the conception of Western civilization as a unity. In the sphere of law, certain legal standards were accepted by all of these States; for instance, those of individual responsibility before the law, impartiality of judicial organization or respect for acquired rights. It is interesting to observe that non-Christian communities, *e.g.*, Turkey, Japan or China, were only admitted within the society of nations subject to international law when they had given evidence that they accepted these underlying standards.

(4) There is the assumption that international law means roughly the same thing to all States subject to it and is regarded by them as binding, notwithstanding the peculiarity of its sanctions. This leads to the fundamental maxim that treaties must be observed, since in the last resort international law itself depends only on consent. Violation of treaty rights, therefore, implies rejection of

the foundation of the consent basis upon which the law had been built up.

The conflict between naturalists and positivists survived Grotius. For a time, the positivist method prevailed, leading in the political sphere to steadily increased State authority, though in a number of countries in Western Europe that authority was no longer exercised exclusively by the king or sectional groups on behalf of the entire community. Positivists held not only that international law lacked any effective impartial authority to enforce it, but also that this was a permanent feature of international law. They tended to cover up and to minimize the implicit disharmony between the identity of judge and party and to legalize war as the litigation of States in the absence of compulsive international jurisdiction for the pacific settlement of international disputes.

Thus the period of international law, which lasted for three centuries after Grotius, exhibited defects still more serious than those existing in the medieval system which it replaced. This state of affairs may suggest that it was merely a transitory phase, preparing the way for some more coherent form of international organization from which the employment of force as an instrument of national policy will have been excluded, but in which force will be retained for the purpose of supporting the decisions of impartial organs in the same way in which it is employed in the sphere of municipal law.

SUGGESTED READINGS

BUTLER, SIR GEOFFREY, and MAGGOBY, S. *The Development of International Law.* 1929.

CURTIS, L. *Civitas Dei* (3 vol.). 1934-1938.

EPPSTEIN, J. *The Catholic Tradition of the Law of Nations.* 1936.

FIGGIS, J. N. *Studies of Political Thought from Gerson to Grotius.* 1414-1625. 1907.

FINCH, GEORGE A. *The Sources of Modern International Law.* 1937.

KEETON, G. W. *The Development of Extra-territoriality in China.* 1928.

——*Shakespeare and his Legal Problems.* 1930.

MAINE, SIR HENRY SUMNER. *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas.* 1861.

MAYER, J. P. *Political Thought. The European Tradition.* 1939.

ROBSON, W. A. *Civilization and the Growth of Law.* 1935.

SCHWARZENBERGER, G. *The Rule of Law and the Disintegration of the International Society* (*The American Journal of International Law,* 1939).

SCOTT, J. B. *The Spanish Origin of International Law.* 1934.

SERENI, A. P. *The Italian Conception of International Law.* 1943.

VERDROSS, A. VON. *Die Einheit des voelkerrechtlichen Weltbildes auf der Grundlage der Voelkerrechtsverfassung.* 1923.

VOLLENHOVEN, C. VAN. *The Law of Peace.* 1936.

CHAPTER 2

THE SOCIAL BACKGROUND OF INTERNATIONAL LAW

'When the animals met to discuss disarmament, the Lion looked the Eagle in the eye and said, "We must abolish talons." The Eagle looked squarely back into the Lion's eyes and said, "We must abolish claws." Then the Bear said, "Let's abolish everything except universal embraces."'
(Seoñr S. de Madariaga, 1932.)

SINCE the sociological analysis of international law is still in its infancy, it is not surprising to find that it possesses no generally recognized terminology which adequately describes the social foundations of international law. Writers refer indiscriminately to the international community as the community or concert of civilized States, the community of international law and the family or society of nations. So varied a nomenclature might be justified if the terms employed were either clearly synonymous or consciously different in meaning. Yet as this is not the case, and we are confronted with a babel of tongues which obscures the real nature of the inter-State system, it seems advisable to adhere strictly to the terminology most nearly akin to it.

The ground has been prepared by the spade work of sociologists to whom we owe a clear distinction between the two main groups of social relations—community and society. According to their established practice a community is a social group in which behaviour is determined by the solidarity of its members which alone provides the cohesive force essential to the existence of the community. The criterion of solidarity represents the decisive factor in the classification of social groups. If this bond is absent or is not strong enough to provide the necessary cohesive force, the group fulfils a different function, the adjustment of diverging interests. It is this feature which distinguishes a society from a community.

In other words, whereas the members of a community are united in spite of their individual existence, the members of a society are isolated in spite of their association.

The former group may be exemplified by a family, church or nation, the latter by a joint stock company. To avoid misconstruction, it must first be emphasized that although neither group could exist without some measure of cohesive force and some kind of interdependence among its members, it is the difference in kind which essentially distinguishes between, for instance, a joint stock company and a church. Secondly, the terms 'community' and 'society' in this context represent 'ideal types' in the technical sense, as used by Max Weber, the German pioneer in the field of sociology. They are therefore 'standards of reference,' pure types which give the essence of the phenomenon and moreover carry its inherent conception to its logical conclusion. If actual groups are to be classified according to these standards, a considerable amount of abstraction is inevitable, and careful judgment alone will determine whether clearly recognizable features predominate in a certain group, or whether it should be classified as a hybrid.

THE INTERNATIONAL SOCIETY

The historical survey in the previous chapter assists in a *prima facie* classification. Viewing the Middle Ages as a whole, we are more impressed by the tendencies towards cohesion than by the diversity of interests which may be traced in their annals. This Christian Commonwealth subsequently broke down under the strain of a dual process—the disintegration of its material foundations and basic values and the gradual expansion of the European society over the whole world. There ensued from this twofold development what may be provisionally termed the modern international society.

In the single activity area which to-day extends over the whole globe a multitude of social forces are at work: States, nations, international institutions, economic interests, political and religious movements, news monopolies, the elusive phenomenon of public opinion and, last but not least, the individual: the basic component element of the international society. These forces, which at times conflict and at others co-operate, react on each other both consciously and subconsciously.

By what measure can the relative importance of these forces be gauged? In a society not permeated with the element of cohesion which denotes a community, their hierarchy corresponds to their actual power, which again can only be determined by the prestige they have gained in earlier trials and by an estimate of their power in future strife. Potential strength in case of conflict therefore becomes the overriding standard.

The study of any major event in the political history of the international society makes it evident that States are the stars in these performances, and that the other forces mentioned above play only minor roles. Nothing, however, could be more misleading than to minimize the importance of the latter, and particularly of economic interests. As Lord MacGowan, the Chairman of Imperial Chemical Industries, Ltd., pointed out in his speech at the Annual General Meeting in 1938, 'day by day questions crop up demanding early action. They touch affairs at home and abroad. Almost any commercial or economic event may affect our interests or our policy; nor can we in these days neglect political matters, for they are so intertwined with business relations that we have learned to regard them as the forerunners of industrial consequences.' Vested interests are frequently entangled in international affairs. Now they serve diplomacy, now diplomacy serves them. Now they influence governments, now governments influence them. Now they lend themselves to the appeasement of political

difficulties, or again they instigate or intensify political friction. This proviso does not, however, in any way affect our initial assessment of the position of States in the international society. Yet it does indicate that, while raw materials and markets, zones of interest and colonies remain essential to States, economic and financial interests will wrest what profit they can from State machinery and will in turn be used by the latter for its own ends. In short, the problem of the undue influence of economic interests upon the State does not depend so much on the existing economic regime, be it capitalist or socialist, as upon the prevalence of a system of power politics.

Why does the State occupy a paramount position in the framework of the international society? This state of affairs should not be taken for granted, as there have been periods when the Church has even contested its right as an equal. The history of the nineteenth and twentieth centuries testifies that the State owes its present primacy to its union with the conception of nationhood. The modern State is in fact welded together by nationalism, a force which has in recent decades proved decisive in international relations. In Lasswell's apt terminology, the organization area of the State coincides with the sentiment area of the nation in the ideal case, in which this union is realized in its purest form. There is, however, a wide discrepancy between each of the limited sentiment areas and the universal activity area—a disparity which was stressed by Edmund Burke in his *Vindication of Natural Society*, when he compared the relations within States to those existing between the Leviathans: 'War is the matter which fills all history, and consequently the only or almost the only view in which we can see the external of political society is in a hostile shape; and the only actions to which we have always seen and still see all of them intent, are such as tend to the destruction of one another.'

Thus, in the international society, self-interest and self-preservation are the fundamental principles which govern the relations between the 'mortal Gods.' They have successfully insisted on sovereignty, that is to say, on freedom from any superior authority except international law (although this reservation should not be unduly stressed), and on freedom of armament, two closely connected prerogatives which have enabled them to pursue their aims with unique intensity of purpose and lack of scruple.

One of the most striking instances of this policy of *raison d'etat* was provided by the German Imperial General Staff during the First World War, when Lenin and his fellow revolutionaries were invited to cross through Germany from Switzerland to Russia in a sealed train. This scheme met with the full approval of General Hoffmann, Chief of Staff on the Eastern Front, who regarded it as a strategic move—'in the same way as I send shells into the enemy trenches or discharge poison gas at him.' However, the Frankenstein monster which had been set at large did not confine its activities to Russia; it invaded the German trenches. Hence Hegel's *List der Idee* appears to operate even in the august realm of inter-State relations. Yet such exceptional cases have by no means prevented statesmen from following Canning's golden rule, as applied by Palmerston in his speech on the Polish question in the House of Commons on March 1st, 1848: 'If I might be allowed to express in one sentence the principle which I think ought to guide an English Minister, I would adopt the expression of Canning, and say that with every British Minister the interests of England ought to be the shibboleth of his policy.'

It has in recent years become increasingly fashionable to maintain that ideological sympathies and antipathies exercise a decisive influence on inter-State relations. To avoid over-emphasizing this argument, however, it is as

well to remember alliances such as the one between Francis I and the Sultan in the sixteenth century; the *entente* between republican France and Czarist Russia, and, in the post-1919 period, the *rapprochement* between France and the U.S.S.R.; the cordial relations between Italy and the U.S.S.R. before the inception of the Axis, and finally to ponder over the significance of the Appeasement Period preceding the Second World War or the Non-Aggression Pact between the Third *Reich* and the U.S.S.R. in 1939. Indeed, one should hestitate to attribute exaggerated importance to any theory of ideological incompatibility. In the last resort all States, whatever their ideological idiosyncracies, are, in a system of power politics, subservient to the principles of self-interest and self-preservation.

FORMS OF POWER POLITICS

In a society of this kind the most obvious safeguard seems to lie in a policy of national preparedness—*i.e.*, of armaments. Yet as the degree of security depends upon the strength of the potential enemy, it follows that it is vital always to be as strong as he is, and if possible stronger. As numerical strength in population is essential, natural increase, even when promoted by State subvention as has been the case from Augustus until Hitler, is too slow to be of any use to those who think in terms of short range policies. Moreover, as long as a country pays any attention to rational considerations, rearmament is conditioned by economic and financial resources. Otherwise it only anticipates in peace time the normal end of a lost war—State bankruptcy.

A complementary device to rearmament therefore seems advisable, such as was described in about 300 B.C. by Kautilya, adviser to the Indian king Chandragupta, in his Arthasāstra:

> 'The king who, being possessed of good character and best fitted elements of sovereignty, is the fountain

Thus, in the international society, self-interest and self-preservation are the fundamental principles which govern the relations between the 'mortal Gods.' They have successfully insisted on sovereignty, that is to say, on freedom from any superior authority except international law (although this reservation should not be unduly stressed), and on freedom of armament, two closely connected prerogatives which have enabled them to pursue their aims with unique intensity of purpose and lack of scruple.

One of the most striking instances of this policy of *raison d'etat* was provided by the German Imperial General Staff during the First World War, when Lenin and his fellow revolutionaries were invited to cross through Germany from Switzerland to Russia in a sealed train. This scheme met with the full approval of General Hoffmann, Chief of Staff on the Eastern Front, who regarded it as a strategic move—'in the same way as I send shells into the enemy trenches or discharge poison gas at him.' However, the Frankenstein monster which had been set at large did not confine its activities to Russia; it invaded the German trenches. Hence Hegel's *List der Idee* appears to operate even in the august realm of inter-State relations. Yet such exceptional cases have by no means prevented statesmen from following Canning's golden rule, as applied by Palmerston in his speech on the Polish question in the House of Commons on March 1st, 1848: 'If I might be allowed to express in one sentence the principle which I think ought to guide an English Minister, I would adopt the expression of Canning, and say that with every British Minister the interests of England ought to be the shibboleth of his policy.'

It has in recent years become increasingly fashionable to maintain that ideological sympathies and antipathies exercise a decisive influence on inter-State relations. To avoid over-emphasizing this argument, however, it is as

well to remember alliances such as the one between Francis I and the Sultan in the sixteenth century; the *entente* between republican France and Czarist Russia, and, in the post-1919 period, the *rapprochement* between France and the U.S.S.R.; the cordial relations between Italy and the U.S.S.R. before the inception of the Axis, and finally to ponder over the significance of the Appeasement Period preceding the Second World War or the Non-Aggression Pact between the Third *Reich* and the U.S.S.R. in 1939. Indeed, one should hestitate to attribute exaggerated importance to any theory of ideological incompatibility. In the last resort all States, whatever their ideological idiosyncracies, are, in a system of power politics, subservient to the principles of self-interest and self-preservation.

FORMS OF POWER POLITICS

In a society of this kind the most obvious safeguard seems to lie in a policy of national preparedness—*i.e.*, of armaments. Yet as the degree of security depends upon the strength of the potential enemy, it follows that it is vital always to be as strong as he is, and if possible stronger. As numerical strength in population is essential, natural increase, even when promoted by State subvention as has been the case from Augustus until Hitler, is too slow to be of any use to those who think in terms of short range policies. Moreover, as long as a country pays any attention to rational considerations, rearmament is conditioned by economic and financial resources. Otherwise it only anticipates in peace time the normal end of a lost war—State bankruptcy.

A complementary device to rearmament therefore seems advisable, such as was described in about 300 B.C. by Kautilya, adviser to the Indian king Chandragupta, in his Arthasāstra:

> 'The king who, being possessed of good character and best fitted elements of sovereignty, is the fountain

> of policy, is termed the conqueror. The king who is situated anywhere immediately on the circumference of the conqueror's territory, is termed the enemy. The king who is likewise situated close to the enemy is termed the friend (of the conqueror).'

As the sociological conditions of this system of power politics and alliances—the juxtaposition of a number of independent and armed States—have been fulfilled in political structures as varying as ancient India and Greece, Renaissance Italy and the modern world, it is not surprising to discover that Kautilya's views remain as true to-day as they were two thousand years ago.

What then is the function of these combinations of States? Alliances are the result of the real or imagined inferiority of States as compared with a rival power or hostile group of States. If the resultant treaty is really intended to be defensive, its most positive function is to ensure the prevention of change. Yet more often it only tends to accelerate the final overthrow of the *status quo* by force of arms. If the existing political situation is maintained only because the State interested in its alteration fears an antagonistic alliance, the ensuing tension will hardly prove conducive to organic growth through mutual understanding and compromise. The focal point becomes less securely fixed upon the objective justification of a claim than on its possible interpretation by the successful State as an increase in prestige and, therefore, as an addition to its moral (or amoral) armour.

If, however, the reader should prefer Hitler's contention that 'an alliance, the object of which is not war, has no meaning and value,' the function of a system of alliances is merely negative. Alliances counterbalance that sensation of fear, isolation and insecurity which in an individual might lead to the adoption of a cautious policy; hence they only give additional momentum to the forces of anarchy and destruction which are in themselves potent enough in the international society.

It has been maintained that, given favourable circumstances, a system of alliances and counter-alliances can produce a certain stability based on the principle of the balance of power, which is congenial to any political system composed of two or more co-existent independent and armed States. As David Hume observed in his *Moral, Political and Literary Essays*, the principle was already familiar in the Hellenic State system: ' Whoever will read Demosthenes' oration for the Megalopolitans may see the utmost refinements of this principle that ever entered into the head of a Venetian or English speculatist.'

The classic definition of the conception of the equilibrium was given by Sir Eyre Crowe in his Memorandum of 1907 on German foreign policy:

> ' The first interest of all countries is the preservation of national independence. It follows that England, more than any other non-insular power, has a direct and positive interest in the maintenance of the independence of nations and therefore must be the natural enemy of any country threatening the independence of others and the natural protector of the weaker communities.
>
> ' History shows that the danger threatening the independence of this or that nation has generally arisen, at least in part, out of the momentary predominance of a neighbouring State at once militarily powerful, economically efficient and ambitious to extend its frontiers or spread its influence, the danger being directly proportionate to the degree of its power and efficacy and to the spontaneity or ' inevitableness ' of its ambitions. The only check on the abuse of political predominance derived from such a position has always consisted in the opposition of an equally formidable rival or of a combination of several countries forming Leagues of defence. The equilibrium established by such a grouping of forces is technically known as the balance of power, and it

> has become almost an historical truism to identify England's secular policy with the maintenance of this balance by throwing her weight now in this scale and now in that, but ever on the side opposed to the political dictatorship of the strongest single State or group at a given time.'

This principle was applied in other continents whenever conditions similar to those in Europe prevailed. Traces of it can be found in South and Central America, although the Monroe Doctrine prevented the full extension of the European balance of power system to the American continent. Again, this principle was applied in the form of a policy of mutual compensations during the period of colonial and imperialist expansion in the second half of the nineteenth and beginning of the twentieth century. For instance, the treaty between Great Britain and China of July 1st, 1898, regarding the lease of Weihaiwei provided that the lease should endure for ' so long a period as Port Arthur shall remain in the occupation of Russia.'

Views on the value of the balance of power system are usually coloured by one instance in which it was comparatively successful: the Concert of Europe as established at the Vienna Congress in 1815. It cannot be denied that the Concert effectively supervised the emancipation of the Balkan States from Turkish rule; that it increased the stability of Europe by guaranteeing the neutrality of Switzerland, Belgium and Luxemburg, that from time to time it fulfilled a quasi-legislative function by the conclusion of treaties which were widely respected beyond the circle of their signatories. In addition, the conference system which grew out of Pitt's and Castlereagh's policies, regulated some, if not all, of the difficulties arising out of the imperialist expansion which began in the latter half of the nineteenth century, and it kept the ring in a number of duel wars.

On the other hand, the Concert was never intended to be a ' union for the government of the world,' as George

Canning reminded the House of Commons on April 30th, 1823, and it must be remembered that on occasion it broke down badly, for instance over the Crimean War, and that the co-operation of the five Greater powers frequently involved the subjection of the smaller States to some kind of despotism, though it might at times have been benevolent. The function of the Concert was never to safeguard the independence of *all* the European States. But even if the smaller States were disregarded, there was always the danger to each of the remaining Greater powers that one of them might achieve overwhelming strength and establish hegemony over the others. Therefore, as long as the balance remains steady, its significance lies in its contribution to the maintenance of the independence of the Greater powers, or in other words, of the aristocracy of the inter-State system in contrast to any continental hegemony.

As Bismarck declared in a conversation with a Russian diplomat, in a balance of power system ' all politics can be reduced to this formula: Try to be *a trois* as long as the world is governed by the unstable equilibrium of five Greater powers.' If this advice or confession is to be taken seriously, as it must be in the light of historical experience, the real aim of each State is not to stabliize the balance, but to add its weight to the heavier side.

The explanation of this phenomenon lies in the peculiar psychological atmosphere that pervades any system of power politics. Even if one side were prepared to demand mere parity with its potential adversary, it is never certain, in a society where self-interest and self-preservation are paramount, that attempts will not be made to outwit the over-credulous. Hence intelligent anticipation seems to provide the only safeguard against this unpleasant eventuality.

It thus becomes obvious that the word ' balance ' has two distinct meanings. In the words of Lowes Dickinson, ' it means on the one hand, an equality as of the two

sides when an account is balanced, and on the other hand, an inequality, as when one has a " balance " to one's credit at the bank.'

As few countries can afford to remain disinterested onlookers in a balance of power system, the inevitable result is a continuous extension of the network of alliances and counter-alliances and an increasingly intensive armaments race. The cost of this policy of mid-summer madness—to borrow Mr. Chamberlain's epithet for the continuance of the application of sanctions against Italy in the summer of 1936—is so enormous that eventually it cannot be met from current national income and must be paid out of the nation's capital reserves. In inverse proportion to their national wealth, countries have sooner or later in the race to choose between three equally obnoxious expedients. Either they must abandon the race which means submitting to a voluntary *capitis diminutio*; or they must increase the financial burdens of their populations, thereby increasing the chance of internal revolution, or again, they can attempt to divert the stream of discontent and unrest by resort to war. Thus the balance of power system fails to achieve the stability, order and peace which should be the natural state of any human society.

Two other suggestions have at various times been put forward as methods of securing the rule of law on the basis of national self-interest. They are isolation and universal imperialism.

Distance is no longer a decisive obstacle if economic necessity or human ambition demand that it should be bridged. Therefore, a policy of isolation depends not so much on geographical position as on political circumstances and public opinion. As the history of neutrality shows, it takes more than one State to be neutral, and the maintenance of that status depends on the armed strength of the neutral State. It would therefore seem that even the desire for isolation must be reciprocated if a country

wishes to be left unmolested. Nor can self-sufficiency be easily achieved, even by the Greater powers. Since politics and economics are indissoluble, it follows that isolation must remain a utopian dream for the smaller States and an impracticable proposition for any Greater or world power. Even in the United States, once the ideological stronghold of isolationism, the policy of isolationism has lost its formerly so eloquent champions. As President Roosevelt said in a speech on April 14th, 1930, 'we have an interest wider than that of the mere defence of our sea-ringed continent. We now know that the development of the next generation will so narrow the oceans separating us from the Old World that our customs and our actions are necessarily involved in theirs, whether we like it or not. Beyond any question, within a few scant years, air fleets will cross the ocean as easily as to-day they cross the closed European seas. Economic functioning of the world becomes therefore necessarily a unit, no interruption of which anywhere can fail in the future to disrupt economic life everywhere. The past generation in Pan-American matters was concerned with constructing the principles and mechanism through which this hemisphere would work together, but the next generation will be concerned with the method by which the New World can live together in peace with the Old.'

Admittedly universal imperialism, as symbolized by the *Pax Romana*, has pursued the same ends as alliances, balance of power and isolationism, and with far greater success. In a world State such as the Roman Empire, war was reduced to police action against uncivilized tribes on the borders or against insurrection within the empire. The sociological postulates for the existence of a universal empire are three: the overwhelming superiority of the ruling State, especially in the military sphere; a generally accepted belief in the superiority which claims that the 'chosen' people rule the world; the absence of national

consciousness and of the urge towards self-determination among the dependent groups. Technical obstacles to world domination have become less formidable than ever before. As Bertrand Russell pertinently remarks in his anaysis of power, revolt and secession were relatively easy in the days of Persian satraps and Roman pro-consuls; yet to-day modern technique has greatly assisted in the consolidation of large empires in comparison with Antiquity, the Middle Ages or even Napoleonic times.

Attempts at world domination are nevertheless doomed to failure to-day; for they run counter to national consciousness and its corollary, the will for national self-preservation, the two most important factors in modern international relations.

Thus, in a system of power politics, if persuasion fails, diplomacy must in the end revert to the threat of pressure, and if this again is of no avail, to its application, in the form of retortion and non-military reprisals. Resort to armed force may stop short of war, as for instance in military reprisals, or it may actually amount to war.

It is essential to remember that, in a system of power politics, war is neither a misfortune nor a supernatural event, but only the culminating point in an ascending scale of pressure. Whatever form it may take, the functions of pressure are essentially the same as those of diplomacy. In the same way that diplomacy may be used for altruistic ends, so can pressure, as is shown by the humanitarian intervention of the European powers in Turkey during the nineteenth century. The same is true of war. On the average, however, pressure and war serve the normal ends of diplomacy, *i.e.*, the interests of the sovereign State, and Clausewitz's well-known aphorism that war is politics carried on by other means is an apt description of the function of diplomacy and war in a system of power politics.

The instability of the rule of force increased in geometrical progression in the nineteenth and twentieth

centuries as a result of at least three trends of major importance. We have already referred to nationalism, which accepts as absolute and undebatable the demands of States whose representatives had a century before regarded diplomacy as a game to be lost or won with the good grace shown by a courteous and educated chess player. The mystical element inculcated into the State through its union with nationhood could not fail to augment the vigour and egotism of the entities of which the international society is composed. Strangely enough, this rising tide of nationalism did not lead to self-limitation on the part of the nations which found such pride in self-assertion. They regarded this development as quite compatible with the rise of imperialism, to which we owe the addition of the term World Power to the already accepted categories of Greater and smaller powers.

This development is the result of technical progress—the invention of mechanical means of communication, transport, and weapons of unparalleled destructive force—of tendencies inherent in the prevailing economic system towards unlimited expansion, and of the requisites of the balance of power system for suitable 'compensations.'

The protagonists of imperialist policy strove for increase in man-power and strategical advantages just as much as for additional supplies of raw material, new markets for capital and goods, and open spaces for the settlement of surplus population.

This *rapprochement* of political and economic interests gave an additional impetus to the law of increasing State activity (Bernhard Harms, 1929), a tendency further stimulated by efforts towards economic self-sufficiency and the necessity incumbent even upon democratic States to equal the efficiency of totalitarian systems.

Nationalism, imperialism and increased State activity have created super-Leviathans more powerful and absolute than their historical precursors.

From this analysis, in the course of which we have investigated the social forces at work in the international society, their relative importance, the hierarchy between them, the driving forces behind them and their various modes of behaviour, it follows that the inter-State system is far removed from the particular type of group relations which we have termed a community. In short, it is a typical society ultimately governed by the rule of force.

The forms of behaviour which may be considered normal in such an environment have so far been shortly summed up by the term *power politics*. This notion is intended to convey an idea of the typical modes of conduct which the ' stars ' on the inter-State firmament ordinarily display. Yet should any more formal definition be required, the additional elements are furnished by the assumptions on which the international system is based and by the criterion by which the hierarchy between the members of the international society is determined:

Firstly, each group within the system of world power politics considers itself not merely as a means to a common end, but as an end in itself.

Secondly, at least for purposes of self-preservation, any measures which are required to achieve this object are deemed to be justified.

Thirdly, the hierarchy between groups within such a system is measured by their political, economic and military strength, that is to say, by their weight in any potential or actual conflict.

ILLUSIONS ON THE CHARACTER OF THE INTERNATIONAL SOCIETY

Before proceeding to the next chapter which will contain an examination of the compatibility of a legal system with this higher ' law ' of force and the functions of such a legal system, we must dispose of an argument which not infrequently arises in the discussion of the

nature of the international society. Is it not a primitive community, similar to clans and cities in the earlier stages of their social and legal history?

If this theory merely presupposed that, just as clans and cities have become parts of a greater organism, so States may also become members of a fully developed community, then no objection to it can be raised. For it is generally accepted that since a society may develop into a community, or a community may deteriorate into a society, there is no inherent reason why the same process should be ruled out in principle in the case of the international society.

If, however, it is implied that such a development is inevitable, this theory seems to conceal a tendency to wishful-thinking which can be proved scientifically about as conclusively as the Marxist contention that, as capitalism followed feudalism, so socialism must succeed capitalism. In either case, the element of will power should not be underestimated, and any such development can only be the result of conscious effort and planning. Further, it seems that the emphasis on the primitiveness of the international society is not warranted by the facts of anthropological research. If the term ' primitiveness ' is intended to convey an analogy to primitive communities in the anthropological sense, it must be remembered that authorities, such as Malinowski, who have done field work on the problem, teach us to beware of the assumption that primitive communities, in the strict sense of the words, are in a state of anarchy. Actually the relations between members of these groups are regulated by an extremely complicated system of intermingled religious and customary rules.

Finally, is it not a little strange that communities which are highly developed in the management of their internal affairs should, as it were by a sudden atavistic metamorphosis, return to the stone age in their relations with one another?

The distinction between community and society, and the fact that individuals and groups can live together simultaneously in a multitude of different relations, assist in a truer understanding of the manifold complexities of the situation created by the disparity between sentiment and activity areas in the international society.

SUGGESTED READINGS

BENTWICH, N. *The Religious Foundations of Internationalism.* 1933.
BONN, M. J. *The Crumbling of Empire.* 1938.
CARR, E. H. *Nationalism and After.* 1945.
COBBAN, A. *National Self-Determination.* 1945.
DICKINSON, G. L. *The International Anarchy.* 1937.
DUPUIS, C. *Les principes d'équilibre et le concert Européen. 1909.*
FRIEDMANN, W. *The Crisis of the National State.* 1943.
GELBER, H. *Peace by Power.* 1942.
HOBSON, J. A. *Imperialism.* 1938.
LANGER, W. L. *European Alliances and Alignments.* 1931.
——*The Diplomacy of Imperialism.* 1935.
LASWELL, H. D. *World Politics and Personal Insecurity.* 1935.
MADARIAGA, S. DE. *Theory and Practice in International Relations.* 1937.
MANDER, L. A. *Foundations of Modern World Society.* 1945.
NICOLSON, H. *Diplomacy.* 1939.
ROBBINS, L. *Economic Planning and International Order.* 1937.
RUSSELL, B. *Power.* 1938.
SCHUMAN, F. *International Politics.* 1937.
SCHWARZENBERGER, G. *Power Politics. An Introduction to the Study of International Relations and Post-War Planning.* 1941.
TEMPERLEY, HAROLD, and PENSON, LILLIAN M. *Foundations of British Foreign Policy.* 1938.
TRIEPEL, H. *Die Hegemonie.* 1938.
WRIGHT, QU. *War* (2 vols.). 1942.
ZUMMERN, SIR ALFRED. *International Law and Social Consciousness.* '*Transactions of the Grotius Society.*' 1935. (Vol. XX.)

CHAPTER 3

THE FUNCTIONS OF INTERNATIONAL LAW

'No more than a community or a nation, can the world base its existence in part on law and in part on lawlessness, in part on order and in part on chaos, in part on processes of peace and in part on methods of violence.'
(Mr. Cordell Hull, 1937.)

OUR investigation into the social background of international law has led us to the conclusion that force is the supreme 'law' of the international society. This does not necessarily imply that the rule of force has achieved, or that it even aims at achieving, exclusiveness. Perhaps, within the framework of power politics, international law fulfils certain functions which will be considered in this chapter.

Experience has shown that the function of international law as actually practised (in contrast to the laudable aspirations of text-book writers who do not always clearly distinguish between the law as it is and the law as it should be) is hardly to condition the rule of force. Actually, within a system of power politics, the relationship between the two systems is reversed. The subordination of the legal system of the international society to this higher 'law' may have various implications. Either its scope may merely be conditioned without there being any further inter-relationship between the two systems, or it may be completely or in part subservient to the rule of force. This may or may not be a welcome conclusion, but the first duty of research is to discover the truth, pleasant or unpleasant, and, even if it is justified, it does not touch upon the conception of the rule of law. On the contrary, it may help to bring this idea nearer to realization; for nothing could be more detrimental to the final victory of law and justice than the glorification of a defective legal system.

THE PLACE OF LAW IN THE INTERNATIONAL SOCIETY

Paradoxical as it may seem, the fundamental conceptions of international law can best be understood if it is assumed that they maintain and support the rule of force.

A few examples may serve as evidence of this theory. In the *Island of Palmas* case between the United States of America and the Netherlands (1928), it was maintained by the Permanent Court of Arbitration that 'sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.' It follows from this definition that, in so far as such independence is not limited by express rules of international law, international society has no right to interfere in the relations between the individuals of whom it is ultimately composed, or between them and States which, with unimportant exceptions are the only subjects of international law.

The absence of a superior authority means that the consent of the sovereign States is necessary for any change in the *status quo* in which any one of them can claim a legal interest. Similarly, unanimity is required at international congresses and conferences, unless an express agreement to the contrary has been reached.

Such a system can only run smoothly either if the inter-State system is so static that no changes of major importance are necessary, or if sovereign States are reasonable enough to make sure that unavoidable changes are effected by agreement. If neither of these assumptions is permissible, life, which is invariably dynamic, will have to come to a standstill or change will have to be effected by other means. Customary international law provides for the second alternative by condoning resort to force; the last throw of a State which is prepared to stake its existence on the arbitrament of war.

Hence, by the absence of provision for reasonable

change, even if desired by a majority of States, the doctrine of sovereignty guarantees that change, which is socially indispensable in any but exceptionally static groups, should be accomplished by force alone, unless an agreement between the disputing parties is feasible.

The exclusion of the individual from the realm of international law provides yet another example of the auxiliary position of this legal system in relation to the rule of force. Only in exceptional cases has the express or implied will of States granted under international law to individuals or to groups other than States a position comparable to that of individuals within the sphere of national law. Normally States alone are recognized as subjects of international law, and the members of international organs are normally representatives of their own States. The existence within the international society, however, of an organization in which delegates of, say, professional groups sit at the same table with, and perhaps even vote against, the representatives of their own governments, has been proved to be entirely feasible by the successful working of the International Labour Organization. Nevertheless there is a remarkable readiness among writers on this subject to declare that any further development in this direction is not only undesirable but incompatible with the fundamental principles of international law, and a corresponding unwillingness on the part of governments to create other international institutions on the tripartite pattern of the International Labour Organization.

The reason is not far to seek. Such an attitude is the product of an outlook which has only distrust for ideas such as, for instance, the abolition of secret diplomacy. True, public procedure is neither invariably feasible nor desirable even in a community proper, since any business carried out in public seems to require more than ordinary tact. This, however, is not why the idea of open diplomacy, that is to say, public criticism of international trans-

actions or the participation of the citizen in the day to day work of inter-State relations, receives a tepid reception in the circles in which diplomacy—the public property of a select few—secrecy and exclusiveness are considered as interchangeable terms. The real reason becomes plain if we imagine the working of a system of power politics in which the ordinary citizen is allowed to follow the development of concrete policies, to appreciate the real motives for diplomatic action, or even to take part in the routine work of international administration. Under the public gaze, the whole system of power politics would inevitably break down. It is not, therefore, the damaging effect of publicity itself on international relations which makes necessary the restriction of democractic control, and is directly responsible for the exclusiveness of diplomacy and the arguments of those who regard international law as the *domaine reserve* of the Leviathans, but rather the indissoluble bond between power politics and secret diplomacy. Hence international law, conceived as a mere inter-State law, helps to lay the smoke screen which hides from the public the true reason for the undesirability of democratic control in the foreign sphere, and for the exclusion of the individual from the realm of international relations.

The problem is admittedly complicated at present by the simultaneous existence of democratic and authoritarian States. As a rule the latter seem to pursue a far more unfettered policy of power politics than the former, which, even in foreign affairs, are still to some extent controlled by the electorate and its representatives. Although this situation may temporarily delay progress, the contrast between the two types of States only emphasizes the salutary effect of even the small measure of popular control which is to be found in the modern democracies.

A study of political treaties proves still more conclusively the close connection between the spheres of law

and force. The international law of peace has for three centuries stabilized the equilibrium which had been achieved by force in the fundamental peace treaties concluded since 1648. The same function is performed by treaties of guarantee and neutralization destined to supplement and maintain a balance of power system and by other agreements such as alliances and treaties of mutual assistance which are generally classified as political treaties.

Why should understandings of this kind invariably be couched in legal phraseology? The following clause of the Treaty of Alliance between Germany and Austria-Hungary of October 7th, 1879, may be taken as an illustration: 'This treaty will be kept secret in accordance with its pacific character and in order to exclude any misinterpretation.' If the treaty is to remain secret, it is unlikely that such wording is intended to impress public opinion. Nevertheless, such a clause may have been influenced either by the desire to prove the innocence of the document in case of premature publication, or by the hope of impressing the future historian. It is, however, more probable that the legal form of such documents is intended to give them additional weight and dignity within the sphere of power politics amongst the signatories themselves. Although the value of legal clauses in a system of power politics should not be exaggerated and, although, according to Bismarck, ' the contracting parties must trust one another that when the case arises, the question will be loyally weighed and decided by the other party,' the legal bond decreases the non-committal character of such liaisons and gives them at least the appearance of stability.

The dignity with which legal forms invest *de facto* situations resulting directly from the application of force is especially valued by States when the time comes to secure the spoils of victory and conquest. Leaving aside exceptions such as the special obligations undertaken by

members of the League of Nations under Article 10 of the Covenant, declarations of policy such as the Stimson doctrine, the corresponding resolution of the League Assembly, or the assumption of jurisdiction by the recently established International Military Tribunal over crimes against peace, including wars of aggression, we are faced with a strange paradox. On the one hand, international customary law leaves States free to resort to force; on the other it grants legal recognition to the spoils gained by force.

Similarly, an almost universally recognized legal principle according to which coercion invalidates an agreement or renders it liable to repudiation, does not apply in international law. The reason is obvious. In a system of power politics there is not likely to be a peace which is not the outcome of war and of an imposed settlement. The function of international law, which differs from municipal law on this crucial point, merely consists in granting legal inviolability to any equilibrium achieved by force, in order to make possible a minimum of stability in the international society.

Finally, international law provides quasi-legal excuses for political measures which are incompatible either with the sovereignty and equality of States—principles of the same legal system—or with contractual obligations, if the binding character of the latter is judged according to the standards of municipal law.

Political action incompatible with the principles of sovereignty and equality has conveniently been described as intervention, reprisals and pacific blockade. Sir William Harcourt's theory that the essence of intervention is illegality and that its justification lies in its success applies to many of these cases. This statement may seem exaggerated in a legal system in which parties may be obliged to take the law into their own hands, but no exception can be taken to Professor Brierly's summing up ' Practice on the matter has been determined more often

by political motives than by legal principles.'

Similar deficiencies are noticeable in State practice concerning the principles of self-preservation, self-defence, necessity and the *clausula rebus sic stantibus*. Confronted with the conflicting demands of political treaties and self-interest, a State may find itself in a dilemma. Such a situation was described with sympathetic understanding by Palmerston in his defence of Austria in 1849: ' Austria has been our ally. We have been allied with Austria in most important European transactions, and the remembrance of the alliance ought undoubtedly to create in the breast of every Englishman, who has a recollection of the history of his country, feelings of respect towards a Power with whom we have been in such alliance. It is perfectly true that in the course of those repeated alliances Austria, not from any fault of hers, but from the pressure of irresistible necessity, was repeatedly compelled to depart from the alliance, and to break the engagements by which she has bound herself to us. We did not reproach her with yielding to the necessity of the moment; and no generous mind would think that those circumstances ought in any degree to diminish or weaken the tie which former transactions must create between the Governments of the two countries. But there are higher and larger considerations which ought to render the maintenance of the Austrian Empire an object of solicitude to every English statesman. Austria is a most important element in the balance of European power.' Westlake has maintained that one of the most important functions of law is to tame the primitive instincts of self-preservation and prevent the crimes committed in its name. Yet, in the absence of compulsory arbitration in cases of this kind, law has little chance of achieving so ambitious an end. Hence it appears that one of the main functions of international law consists in supporting the rule of force the achievements of which it invests with the sanctity and dignity of law, and in providing a State anxious for the

modification of the *status quo* with a convenient excuse for its upheaval.

LIMITATIONS OF INTERNATIONAL LAW

Several of the shortcomings of the legal system of the international society are, in fact, a direct result of this subordination to the rule of force. Although these deficiencies are not necessarily permanent, inherent or unavoidable, they cannot be eradicated until the existing relationship between law and power politics is reversed.

(1) THE DEVELOPMENT OF INTERNATIONAL LAW AND THE CONSENT OF THE POWERS. A legal doctrine which holds that law is a truth to be sought after and that it grows subconsciously would be extremely inexpedient in a system of power politics in which law is subservient to the rule of force. Obviously, the validity of truth cannot depend on the attitude of the entity which is supposed to be bound and restricted by legal norms. Thus the doctrines of natural law, though never to any appreciable extent observed in State practice, were gradually replaced by positivist doctrines according to which States are subject to international law only by their own express or implied consent. The development of new rules of customary law could therefore be conveniently vetoed in each case by the contention that the State against which the existence of a rule was maintained had never given the required consent. Even if it were admitted that no *consensus omnium* was required for the creation of customary law, this argument could hardly be overruled when a Greater or 'leading' power was involved. Thus, unfettered State sovereignty received considerable assistance from positivism, which was naturally acclaimed by protagonists of power politics such as Treitschke, because it dealt 'the deathblow to the false conception of some imaginary law. Only a positivist law then remains, and no amount of theorizing can lay down principles for it, unconditionally and without more ado.' Thus vanished

the last vestiges of the former universalistic conception of law, a heritage of the Middle Ages. An atomistic outlook prevailed, and the development of international law depended wholly upon the will of the entities which it was supposed to restrain.

(2) LIMITATIONS OF INTERNATIONAL ARBITRATION. In a system ultimately based on the rule of force, the Leviathans cannot be expected to act with humility and moderation in matters of vital importance. As was emphasized in the Advisory Opinion of the Permanent Court of International Justice in the *Eastern Carelia* case, 'it is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement.'

It is not therefore surprising that the Peace Conference at The Hague 'convoked in the best interests of humanity' (Preamble of the Final Act, 1899) and having 'succeeded . . . in evolving a very lofty conception of the common welfare of humanity' (ibid., 1907), did not succeed in taming the lion of power politics by means of arbitration. The general state of mind at the time was aptly described by Baron von Holstein in these words: 'Small disinterested States as subjects, small questions as objects of arbitral decision, are conceivable, great States and great questions are not. For the State, the more so the bigger it is, regards itself as an end, not as a means towards the attainment of higher aims lying outside it. There is no higher aim for the State than the protection of its own interests. But the latter, in the case of the Great powers, are not necessarily identical with the maintenance of peace, but rather with the subjugation of an enemy and rival by a well-constructed stronger group.' The conventions adopted at these Conferences, even those concerning procedures not involving binding decisions, contain a collection of general clauses intended to provide

an easy way out for States which want to remain free to revert to power politics. The Convention for the Pacific Settlement of International Disputes, for instance, contains several such clauses: 'With a view to obviating *as far as possible* recourse to force' (Article 1); 'the contracting Powers agree to have recourse, *as far as circumstances allow*, to the good offices of one or more friendly Powers' (Article 2); international commissions of enquiry were established 'in disputes of an international nature involving *neither honour nor vital interests* and arising from a difference of opinion on points of fact . . . *as far as circumstances allow*.' (Article 9).

(3) LIMITATIONS OF DISARMAMENT. The spectacle of an abortive disarmament conference is by no means confined to modern times. In 546 B.C. the representatives of fourteen different Chinese States assembled to discuss this subject and could not achieve any agreement. No more success attended the Hague Conferences in the early years of the twentieth century. For the rule of force is as inimical to disarmament as it is to a comprehensive system of arbitration. The identity of interests even between potential enemies with regard to disarmament was described by Delcassé in a conversation with Count Muenster, the German Ambassador in Paris: 'In this conference we have precisely the same interests as you. You will not limit your forces at the moment nor agree to proposals for disarmament. We are in the same position. On both sides we wish to spare the Czar and to find a formula to get round this question; but we will not let ourselves in for anything which may weaken our forces on either side. To avoid a complete fiasco perhaps we may make a concession about arbitration. But this must not limit the complete independence of the great States.'

(4) PECULIARITIES OF THE SANCTIONS OF INTERNATIONAL LAW. The customary view that resort to force and war are the sanctions of international law must not be accepted

without reservation. So-called self-help in international law has nothing in common with its supposed counterpart in municipal law. Not only is the scope of self-help here strictly limited by legal rules, but the community itself superintends the methods by which this extraordinary procedure is applied, and the injured party can invoke the assistance of the courts if his opponent oversteps the bounds of his rights. Thus, in the municipal sphere there exist sufficient safeguards for the preservation of the exceptional character of this right and the prevention of serious abuses. None of these guarantees is provided by international law. Although the action of a State amounting to self-help may be compatible with the rule of law, within a system of power politics, it is neither certain nor even probable that resort to such means would keep within such limits. In these circumstances, the classification of intervention, reprisals and war as measures of self-help or sanctions of international law becomes merely a convenient legal cloak for actions which really belong to the sphere of the rule of force. ' Self-help ' is, therefore, one of the most obvious examples of cases in which legal terminology frequently fulfils the function of disguising the true nature of a phenomenon. Here again it is the higher ' law ' of the international society which is actually applied, but which is hidden behind the seemly façade of international law. Nevertheless international law has *real* sanctions, which will be discussed in connection with the functions fulfilled by international law outside the realm of power politics.

If even the international law of peace suffers from such deficiencies, what scope is there for rules of warfare and neutrality? In wars fought with the limited purpose of re-establishing the old, or founding a new, equilibrium, international law has a certain function, providing that the rules of warfare and neutrality do not unduly hamper the belligerents. Since, in deference to Christianity and to feudal ideals, principles of chivalry and humanity were

applied *reciprocally* by belligerents, the laws of warfare could gradually be relaxed; for conformity to them on a basis of reciprocity did not materially affect the decisive issues of victory and defeat. Similarly the legal determination of the rights and duties of neutrals corresponds to the interests of the belligerents: the prevention of the preferential treatment of the opponent by neutral powers and the avoidance of any violation of the rights of neutral States tending to drive them into the enemy's camp, thus extending the scope of the war and thereby endangering the main object of a balance of power conflict. The neutral powers can likewise only hope to avoid being drawn into the war by steering an unwavering course between the Scylla and Charybdis of the belligerents.

The Napoleonic Wars and the two World Wars, however, prove that as soon as war ceases to be a duel and develops into a life and death struggle, the rules of warfare and neutrality which have previously been accepted by both sides are likely to be jettisoned whenever they are a serious disadvantage to one of the belligerents. Thus during such a war the rules governing the actual practice between belligerents as well as between belligerents and neutrals move by means of reprisals and counter-reprisals further and further away from the law which had previously been regarded as valid.

Thus extremes meet. In those spheres of the law of peace which are subservient to power politics, the threat of force plays an important part, but once force has been actually brought to bear, there remains no further effective threat. It is therefore not surprising that, as in relations between belligerents, mutuality and reciprocity are the basic principles regulating the domains where international law functions as a legal system proper. These spheres, which are relatively unaffected by the rule of force, include transit, transport, communications, protection of economic interests such as copyrights and trade marks, economic and financial

co-operation and humanitarian matters. Here international law plays an important part in regularizing and simplifying the relations between the powers, and even the subject-object relationship between Greater and smaller powers is transferred into one of relative equality. In these spheres, the advantages of conformity to international law are so great that it would not be worth the while even of a powerful State, which could do so with apparent impunity, to violate these rules, since their observance could hardly be as irksome as the inconveniences which would be entailed by the absence of such rules or by exclusion from their benefits. Hence a legal order based on mutuality and reciprocity can safely rely on the penalties inherent in its social machinery, *i.e.*, on the unwillingness of each participant to jeopardize the benefits it derives from the system by being excluded because of repeated violations of its obligations. Within the State vested interests anxious to preserve stability in the international society, such as export industries, banks or transport and trade establishments, can be depended upon to exert their influence and to maintain and extend these reciprocal relations, subject to the limitations imposed upon them by the over-riding exigencies of power politics.

THE INTERNAL STRUCTURE OF STATES AND INTERNATIONAL LAW

It here seems apposite to consider the degree of homogeneity of the entities which compose the international society, which, it is maintained, is essential for the survival and development of international law. It cannot be denied that international law—the product of the disintegration of the *Civitas Christiana* of the Middle Ages—was originally applicable only between Christian nations, and was later extended to non-European States on the assumption that the standards of value underlying the Christian law of nations were accepted by the Near and Far Eastern

States at least in a modified form, *i.e.*, as the standards common to all civilized nations. But even this element of homogeneity was thrown overboard when the last barrier to heterogeneity was broken down by positivism.

Has the rise of the authoritarian and totalitarian States in the post-1919 period materially altered this position? Before the First World War, Czarist Russia, imperial Germany, monarchical Britain and republican France existed side by side in the international society, and in principle nothing prevents democratic and authoritarian States from adopting a similar attitude of toleration towards each other.

The real problem is to decide whether the fact that a State is democratic or totalitarian makes any perceptible difference in its readiness to honour its obligations. In the sphere of power politics, it would seem, the difference is one of degree rather than of kind, while on the non-political side, the principle of reciprocity appears to have a stronger pull than the ideological sympathies or antipathies arising from homogeneity or disparity of structure. However, unless the internal structure of States is roughly similar, the principle of reciprocity can only be applied *formally*, and Harms' law of increasing State activity, to which we referred in the last chapter, works at a different speed in democracies and totalitarian States.

The importance of this difference should not be exaggerated. During the transition from the mercantile system to modern industrialism and free trade, there were similar differences between the members of the international society in their division of functions between the State and the individual. Yet they did not result in the breakdown of international law. A comparable process of assimilation is now noticeable even in States which highly value the freedom of the individual—a development which, in spite of minor differences, may in the long run restore the reciprocity dependent on a

roughly equal division of the functions allotted to the State and to the individual.

An aspect of the problem which merits more serious attention is the general increase of State control over activities which, before the First World War, were reserved to the initiative of the individual and which are being increasingly encroached upon in democratic as well as in totalitarian States. Economic, financial and social international relations, as well as education and culture, are becoming increasingly involved in the turmoil of power politics, where law serves predominantly as an ideology. It cannot be denied that this development tends to circumscribe still more narrowly the scope of those fields of international law which are based on the principle of reciprocity.

THE LEGAL CHARACTER OF INTERNATIONAL LAW

A clearer insight into the social functions of international law may also assist us in determining whether it can be regarded as law in the customary sense of the word. Here again our earlier distinction between community and society may be helpful and prevent us from giving a purely formal answer by the time-honoured trick of carefully adjusting an abstract definition to preconceived conclusions.

The essential difference between a community and a society consists in the attitude of its members towards the group itself as well as towards each other. Solidarity, loyalty and the subordination of sectional interests are the hall-marks of a community, but are absent from a society where self-interest is the main preoccupation of the members. This difference also affects the law in these social groups, and law fulfils a different function in each of them. The law which regulates the life of a community such as a family or of an organization such as a church, generally formalizes only customary behaviour, which would be observed even without its existence. It defines

the relations between members, which the majority regard as substantially sound and adequate, and finds its main justification in its application to abnormal situations. It is the visible expression of common values and of relationships which are in themselves a valid and binding reality for the greater part of the members of the community. On the other hand, the law regulating the relations between the members of a society such as a joint stock company has a different function. Its purpose is to prevent a *bellum omnium contra omnes*, and to make limited co-operation possible between individuals who, being interested chiefly in the maintenance and improvement of their own positions, and seeking primarily their own advantage, are therefore at best prepared to apply the principle of reciprocity in their relations with each other, and for the most part only in proportion to their actual power.

There are no objections to regarding as a legal system that part of international law which lies outside the range of power politics. Here a body of rules for human conduct is applied, which, by the common consent of the international society, is enforced by the penalties inherent in this legal system, and conformity to which even the strongest members regard as advisable, and, indeed, as indispensable.

More doubtful, however, is the position of international law where it is subservient to the rule of force and power politics. International law might well fulfil the proper functions of a legal system—that of taming the primitive instincts on which the rule of force is based, and eliminating the threat of force and resort to war except as an extraordinary means of self-help. In the light of political reality since the inception of this legal system, such a description of the functions of international law would merit the indictment that it lacks realism and that it bears a suspicious resemblance to an ideological disguise of power

politics. Intellectual honesty compels us reluctantly to admit that, in these fields, international law does not condition, but is itself conditioned by, another system which is supreme in the international policy.

Can international law claim to fulfil the functions of a legal system if, and in so far as, it is subordinate to the use of force? For those to whom an answer in the negative is a foregone conclusion, a comparison with the legal systems of absolutist or totalitarian States may be helpful. *Lettres de cachet* and other forms of tyranny are as inseparably connected with the former as concentration camps and mass executions are the necessary accompaniment of the latter. Nevertheless, the France of Louis XIV and the Germany of Hitler were based upon detailed and complicated legal systems regulating the everyday lives of their citizens. Everyone knows that it needed only a sign from the one man above the law or from a powerful leader in his entourage to alter the law whenever it seemed expedient. Admittedly, doubts as to the legality of this procedure can be dispersed by the handy fiction that, in such cases, no one actually stands above the law, since the supreme lawgiver—the king or dictator—only modifies the law in such exceptional cases. Nevertheless, such an interpretation would not amount to more than a polite statement of the hard fact that, in these cases, the legal system is dependent on its compatibility with the supreme rule of force. These examples from the more familiar sphere of municipal law are given in order to illustrate a situation which has many similarities to the relationship between force and law in the international society.

The standing of such a legal system is far from impressive. A law concentrated in the hands of the mighty contradicts the conception of ideal law as formulated by philosophers and writers throughout the centuries. But research into the sociological background of municipal law has revealed that, though it compares favourably with

international law, it is itself not entirely free from similar defects. Certainly, however, the importance and supremacy of power is nowhere as brutally obvious as in the international society and in totalitarian States.

SUGGESTED READINGS

BRIERLY, J. L. *The Law of Nations.* 1936.

——*The Outlook for International Law.* 1945.

FRIEDMANN, W. *The Growth of State Control over the Individual and its Effect upon the Rules of International State Responsibility. British Year Book of International Law.* 1938.

GOODHART, A. L. *The Nature of International Law.* '*Transactions of the Grotius Society.*' 1937. (Vol. XXII.)

HUBER, M. *Beitraege zur Kenntnis der soziologischen Grundlagen des Voelkerrechts und der Staatengesellschaft.* 1928.

KAUFMANN, E. *Das Wesen des Voelkerrechts und die clausula rebus sic stantibus.* 1911.

KEETON, G. W. *The Problem of the Moscow Trials.* 1930.

KELSEN, H. *Das Problem der Souveraenitaet und die Theorie des Voelkerrechts.* 1920.

KOROVIN, E. A. *Das Voelkerrecht der Uebergangszeit.* 1929.

LAUTERPACHT, H. *The Function of Law in the International Community.* 1933.

NIEMEYER, G. *Law Without Force.* 1941.

OPPENHEIM-LAUTERPACHT. *International Law.* (2 vol). 1945-1946.

PASCHUKANIS, E. *Versuch einer Kritik der juristischen Grundbegriffe.* 1929.

SCELLE, G. *Précis de Droit des Gens.* (2 vol). 1932-1934.

SCHWARZENBERGER, G. *The Three Types of Law.* '*Ethics.*' 1943.

——*International Law and Totalitarian Lawlessness.* 1943.

——*International Law and Society. The Virginia Quarterly Review.* 1944.

SMITH, H. A. *Le développement moderne des lois de la guerre maritime. Recueil des Cours de l'Académie de la Haye.* 1939.

——*International Law-making. Transactions of the Grotius Society.* 1931.

CHAPTER 4

THE FUNCTIONS OF INTERNATIONAL MORALITY

'Unable to strengthen justice, they have justified might; so that the just and the strong should unite, and there should be peace, which is the sovereign good.'

(Pascal, 1670.)

IT may be doubted, with some justification, whether moral influence can possibly permeate a society predominantly ruled by force. Yet it is wise to avoid exaggeration; for, in the environment already depicted, we have found that there may exist specific, if not extensive, functions which international law can adequately fulfil. It is, therefore, highly probable that morality, too, is not entirely absent from the realm of international realtions.

THE PROBLEM AND METHODS OF APPROACH

The problem of international morality can be expressed as follows: in the relationship between the 'stars' of the international society, do there exist any rules identical to, or comparable with, those moral norms which apply to the relations between individuals? Is it any use either to apply in the inter-State system the standards of good or bad, or to enquire whether a State ought to fulfil a moral duty which it might, for reasons of convenience, prefer to leave undone?

Let us consider some of the possible methods of approaching this problem.

The religious approach would consist in an uncritical application of doctrinal principles to the inter-State system to the extent to which doctrine clearly demanded, or to which authorized and unauthorized interpreters might think fit to apply them. Although the moralist's

opinion might vary as to the relation between the religious and moral systems, he would follow essentially the same course.

In ascertaining and assessing the moral values actually recognized by individual or collective entities, the philosopher would meet us on common ground. Although, in his search for the alchemist's stone, he might be inclined to disregard other ethical systems, this potential flaw would not in itself affect his main function, which is to develop the results of his work into a rational and coherent system, probably culminating in a scale of ethical values.

The lawyer's approach to the problem of international morality would differ in accordance with his views as to the relation between natural and international law. A positivist, of the type we prefer to term voluntarist since he excludes international morality, even if there were conclusive evidence in the practice of States of the reception of morality into law, would shrink from accepting morality as a *sine qua non* of international law. In diametric contrast, a naturalist would either pin his faith to the superiority of natural over positive law, or else equate them. Writers of the school known as Grotian, which represents the golden mean between these two extremes, would examine customary law, treaties and the general principles of law as recognized by civilized States and would search in the practice of States for traces of an infiltration of morality into the system of international law, and, accordingly, would either exclude or apply conceptions of international morality.

We do not identify our task with any of those so far described; for we are not so much concerned with systems of morality and judgments on the role which morality *ought* to take in the inter-State system as with the moral rules which are actually, or else professed to be, applied. Yet, such an investigation can only be regarded as a preliminary measure, providing the indispensable material

for the essential problem of this chapter, which is the analysis of the functions of international morality. Only sociological methods can adequately serve this purpose.

To recapitulate: the problem of international morality cannot in any way be identified with the existence, in this and other countries, of moral codes which regulate the relations between individuals *qua* individuals, and which might be termed international in the sense that their validity extends beyond the frontiers of a single country. The question is whether between Great Britain and the U.S.S.R., France and Spain, China and the United States of America, there exist rules of behaviour which are in any sense comparable with the moral code existing between gentlemen in Great Britain, decent citizens in France, and between other beings whose outward appearance at least would lead to their inclusion in the *gens humana*.

THEORIES OF INTERNATIONAL MORALITY

Various endeavours have been made to elucidate whether moral rules impinge upon the behaviour of States. First, there are those theories which are based on a denial of the existence of any international morality. The chapter of 'The Prince' in which Machiavelli formulated his conclusion based on the observation of contemporary behaviour, is yet unsurpassed in its appreciation of Renaissance diplomacy:

'A Prince being thus obliged to know well how to act as a beast must imitate the fox and the lion, for the lion cannot protect himself from traps, and the fox cannot defend himself from wolves. One must therefore be a fox to recognize traps and a lion to frighten wolves. Those who wish to be only lions do not understand this. Therefore a prudent ruler ought not to keep faith when by so doing it would be against his interest, and when the reasons which made him bind himself no longer exist. If men were all good, this precept would not be a good

one; but as they are bad, and would not observe their faith with you, so you are not bound to keep faith with them. Nor have legitimate grounds ever failed a prince who wished to show colourable excuse for the non-fulfilment of his promise. Of this one could furnish an infinite number of modern examples, and show how many times peace has been broken, and how many promises rendered worthless, by the faithlessness of princes, and those who have been best able to imitate the fox have succeeded best. But it is necessary to be able to disguise this character well, and to be a great feigner and dissembler; and men are so simple and so ready to obey present necessities that one who deceives will always find those who allow themselves to be deceived.'

Secondly, there is the antithesis to this view as expressed by Kant, who does not admit any difference in kind between the moral obligations incumbent upon individuals and States:

'Hence the mechanism of nature, working through the self-seeking propensities of man (which of course counteract one another in their external effects) may be used by reason as a means of making way for the realization of her own purpose, the empire of right, and as far as is in the power of the State, to promote and secure in this way internal as well as external peace. We may say, then, that it is the irresistible will of nature that right shall at last get the supremacy.'

Thirdly, there are theories derived from the contention that States are not outside the realm of morality, but that there is a difference in kind between the moral rules applicable to these collective entities and those applicable to individuals. According to Hegel and Treitschke, the moral duty of the State consists in its self-preservation and self-realization, that of the citizen in self-sacrifice: 'We have learned to perceive the moral majesty of war through the very processes which to the superficial observer seem brutal and inhuman. The greatness of war is just what

at first sight seems to be its horror—that for the sake of their country, men will overcome the natural feelings of humanity, that they will slaughter their fellow men who have done them no injury, whom they perhaps respect as chivalrous foes. Man will not only sacrifice his life, but the natural and justified instincts of his soul; his very self he must offer up for the sake of patriotism; here we have the sublimity of war.'

STATE PRACTICE AND INTERNATIONAL MORALITY

Judging from State practice, it would appear that diplomatic correspondence, preambles of international treaties and the public utterances of statesmen were imbued with ethical conceptions and maxims. Frequently recurring themes are freedom of the State, freedom of the sea, free access to the sea, good faith, order, honour, justice, equity, civilization, humanity, and peace.

The interpretation of this phenomenon may be assisted by a few striking examples. An apt beginning is provided by Genghis Khan's address to a Persian embassy sent by the Khwarizm-Shah: 'Say ye unto the Khwarizm-Shah,' Genghis told the ambassadors, 'that I am the sovereign of the sunrise, and thou the sovereign of the sunset. Let there be between us a firm treaty of friendship, amity and peace, and let traders and caravans on both sides come and go, and let the precious products and ordinary commodities which may be in my territory be conveyed by them into thine, and those of thine, in the same manner, let them bring into mine.'

Again, at the 1815 Vienna Peace Conference when the model European balance of power was worked out, Talleyrand suggested the following guiding principle for the negotiations: 'The only means of avoiding future wars consists in not dishonouring a great nation.'

According to the Act of the Holy Alliance of September 26th, 1815, the signatories 'acquired the intimate conviction of the necessity of settling the steps to be observed

by the Powers, in their reciprocal relations, upon the sublime truths which the Holy Religion of our Saviour teaches.' Further, ' they solemnly declare that the present Act has no other object than to publish, in the face of the whole world, their fixed resolution, both in the administration of their respective States, and in their political relations with every other Government, to take for their sole guide the precepts of that Holy Religion, the precepts of Justice, Christian Charity and Peace, which, far from being applicable only to private concerns, must have an immediate influence on the councils of Princes, and guide all their steps.'

A representative example of a clause of this calibre selected from peace treaties is provided by Article I of the Treaty between Austria, Russia and Denmark of October 30th, 1864: ' There shall be in the future peace and friendship between their Majesties the King of Prussia and the Emperor of Austria and his Majesty the King of Denmark as well as between their heirs and successors, their respective States and subjects in perpetuity.'

Reference to principles of international morality frequently occur in diplomatic notes and correspondence. The following examples may be selected as evidence:

In a despatch from Lord Russell to the Earl of Elgin this passage appears: ' It would be unreasonable to expect that the Chinese should observe the technical laws and regulations which have been concurred in by European nations as the rules of peace and war. But the most ordinary notions of justice and humanity teach the rudest of mankind that when an engagement is made, justice requires that it should be observed.'

A note from the Mexican Foreign Minister to the British Minister is particularly interesting, since, in the same document, any responsibility of Mexico under international law is denied:

'Nevertheless, the Constitutional Government, from feelings of humanity and justice, would not be indisposed to grant some kind of voluntary indemnity in such instances as the present one, and, as regards the family of Dr. Duval, would be willing to set aside house property to the amount of 25,000 dollars, the sum specified by Mr. Mathew. An arrangement could be carried out either in actual houses or in convent property, the latter having been secularized.'

Or to quote from the Circular addressed on behalf of the Holy See to the Diplomatic Body in Rome, protesting against the overthrow of established sovereigns as the result of plebiscites, attention is drawn to an abuse 'which tends to confound the immutable, eternal maxims of justice, advances the monstrous right of usurpation, and introduces a germ of fatal inquietude and turbulence into society.'

The 1919 Peace Treaties abound with references to international morality. Among the documents of the drafting period, Colonel House's plan for the Covenant lays particular stress upon the identity of the standards of morality binding upon individuals and States. 'The same standards of honour and ethics shall prevail internationally and in affairs of nations as in other matters.' The Preamble of the League Covenant prescribes 'open, just and honourable relations between nations' and 'the maintenance of justice.' The accusations brought against the former German Emperor are based on the allegation of 'a supreme offence against international morality and the sanctity of treaties.' The Special Tribunal created under Article 227 of the Treaty of Versailles for the purpose of judging these offences was to be guided 'by the highest motives of international policy with a view to vindicating the solemn obligation of international undertakings and the validity of international morality.' Article 231, containing the War Guilt Clause, refers to 'the aggression of Germany and her allies.' In the

Preamble to Part XIII of the Peace Treaties, it is emphasized that 'peace can be established only if it is based upon social justice' and gives as the reason for the establishment of the International Labour Organization the explanation that the High Contracting Parties 'were moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world.'

A noteworthy attempt to apply Christian principles of morality to inter-State relations may be found in President Roosevelt's policy of the 'good neighbour,' a challenge to the 'bad' neighbour policy of power politics as practised from the days of Kautilya to our own times. This categorical imperative was enunciated by the President in his Inaugural Address to Congress on March 4th, 1933: 'In the field of world policy I would dedicate this nation to the policy of the good neighbour—the neighbour who resolutely respects the rights of others—the neighbour who respects his obligations and respects the sanctity of his agreements in, and with, a world of neighbours.' The complete break with 'Yankee Imperialism' and 'Dollar Diplomacy' was re-emphasized in the President's address to the Brazilian Congress of November 27th, 1936: 'The motto of war is "let the strong survive; let the weak die." The motto of peace is "let the strong help the weak to survive"!' In the Declaration of the United States' Secretary of State of July 16th, 1937, these general principles are further elaborated.

It would be incorrect to assume that the totalitarian States did not profess adherence to the standards of international morality. In a Japanese Note to the American Secretary of State on 1924, a protest was registered against a clause of the United States Immigration Act of 1924 on the ground that 'international discriminations in any form and on any subject, even if based on purely economic reasons are opposed to the principles of justice and fairness upon which the friendly

intercourse must, in its final analysis, depend.' The speeches of the former German Chancellor at a State banquet arranged in his honour in Rome, afford insight into an ethical principle apparently approved by both partners in the now defunct Axis: 'Duce, last August on the Maifeld in Berlin you quoted as an ethical principle, sacred to you and Fascist Italy, these words: "Speak plainly and frankly, and if you have a friend, march with him right to the end." In the name of National-Socialist Germany I, too, acknowledge this rule.' On his return from Munich on September 30th, 1938, the Duce said in his speech from the Palazzo Venezia: 'Comrades, you have been living through memorable hours. At Munich we worked for peace based on justice. Is not this the ideal of the Italian people?'

It is no more than a just tribute to the greatest sacrifice in modern history rendered by a people to the cause of international peace to conclude this survey with an extract from President Benes' abdication broadcast in October, 1938: 'With composure and with calm we confront our fate. In these difficult times I have tried to safeguard the interests of our State and I have tried to do what is right for Europe in order to preserve the peace. We have now to reach an understanding with our neighbours. Their overpowering might has been too great for us.'

THE PLACE OF MORALITY IN INTERNATIONAL SOCIETY

The passages cited tend to confirm the impression that, whatever its functions may be, international morality is a reality. Before attempting to elucidate the nature of this reality through an examination of the purposes served by morality in the international society, it is worth considering the agencies which create and transmit the moral values.

In democracies, governments maintain, and are perhaps

over-ready to profess, that they are pursuing policies which are in accordance with the articulated or presumed wishes of their electorates. Such an attitude implies that the norms of their moral conduct are not supposed to differ materially from those of the peoples whom they lead, or if so, that they have to be harmonized with the latter. Perhaps the most striking instance in recent history of such a discrepancy has been provided by the reaction of British public opinion to the projected Hoare-Laval pact in the course of the Italo-Abyssinian War. The proposals of these statesmen were in the finest tradition of power politics. Since they were based on an understanding that the Covenant could not be applied against any Greater power, they were in no sense revolutionary. Subsequent events proved that, within the framework of a society ultimately ruled by force, they were even realistic. Nevertheless, in view of the election pledges given by the Government a few months previously, and of the British initiative displayed in Sir Samuel Hoare's speech in the League Assembly in September, 1935, a 'deep feeling' arose—to quote Lord Baldwin—'on the grounds of conscience and honour.' The British Government, therefore, thought it advisable to temporize and to yield to this wave of public indignation.

According to the importance they assign to propaganda within and beyond their frontiers, it would seem as though authoritarian and totalitarian States nurse public opinion even more carefully than the democracies. In view of the reaction of the German people to the Chamberlain visit to Germany, it would be quite erroneous to ignore this facet of dictatorships.

What exactly is this phenomenon of public opinion that William Ladd once crowned 'Queen of the World,' and which is depicted by a noted historian as follows: 'The opinion of the world, public opinion, when faced with the distinction between right and wrong, always adopts the right'? Or, to quote from public documents,

the Preamble to the Constitution of Brazil of November 10th, 1937, seeks to justify its imposition on the Brazilian people by reference to ' the support of the armed forces and yielding to the dictates of public opinion, both justifiably apprehensive of the dangers threatening the Union and of the swiftness with which our civil and political institutions were being undermined.' In order to attain a sober judgment of this phenomenon, its existence as a psychological reality and as an expression of mass reaction can hardly be denied. Even if we were to grant Mowat's optimistic assumption that, in an issue of right *versus* wrong, public opinion would inevitably adopt the right, two provisoes seem indispensable. First the issues of life do not usually appear as a choice between black and white, but between various shades of grey, as, for instance, a scrutiny of the work of municipal courts will reveal. Much the same applies to the inter-State sphere in which, however, we tend to accept such over-simplifications with greater credulity. Actually, there is hardly anything more difficult than the classification of the behaviour of States according to one of the available standards of moral appraisement or condemnation. Everything depends on the material and the light in which it is shown. Degrees of emphasis may prove decisive in shifting the balance one way or the other, as in the instance of controversial events such as the war in Spain.

In these circumstances, the transmission of evidence is of vital importance and the pivotal position occupied by monopolies of sensationalism becomes apparent. The interests of newspapers as profitable concerns do not necessarily coincide with the requirements of a well-informed public opinion: the impartial transmission of news and the judicious selection of important news. In view of the public's propensity for items of a sensational character, the element of competition does not appear to be a reliable safeguard. It induces the various news organs to contend for priority in the dissemination of

the result of a race or a divorce suit, and so to deflect the attention of the ' queen of the world ' from perhaps equally important news items in the political and economic spheres. Thus, the casual and unsystematic manner in which public opinion is supplied with the material which assists in its formation is a patent feature even of democratic political life. It is poor consolation to trust that where really vital matters are concerned, public opinion will at a certain stage consolidate the issue and irresistibly over-ride the barriers which had been raised by its own indolence or by an inadequate supply of information; for in our modern world the time factor is of primary significance. It is therefore essential to realize that, even in democracies, public opinion is not an adamant *rocher de bronze*. Although it is within its power to influence other social forces, it may also resemble a weathercock which swings to the vagaries of these forces.

So far, we have not dealt with the assumption which apparently underlies the quotations from State practice, that British and Japanese, German and Czechoslovakian statesmen associate the same ideas with the notions of justice and equity, honour and friendship to which they render such eloquent homage. In other words, is there any justification in assuming the existence in the international society of one universally binding system of moral values ?

Hold-Ferneck, an Austrian international lawyer, whose views are based on the study of the psychology of nations, refutes the fact of a morality entitled to claim world-wide scope. At first sight, it would appear that an additional argument, which Hold-Ferneck does not put forward, would support this contention: that, ultimately most ethical systems spring from a religious source and are the product of a conscious or unconscious process of secularization. The most perfunctory survey of the attitude of the major religions towards the world in

general, and inter-State relations in particular, reveals a lack of uniformity on this score. The Christian conception alone lends itself to manifold interpretations, varying from the doctrine of rendering unto Caesar what is Caesar's, to that of non-resistance. Some religious systems admit the validity of a truce but deny the possibility of peace between the followers of the prophet and the infidels. According to others all worldly matters are intrinsically bad, since they detract from human perfection or, at best, are irrelevant from the standpoint of the faithful. Nevertheless, the impact of these conflicting dogmas upon the formation of international morality was not as heavy as might have been expected. In the expansion of Europe overseas, the religious and ethical conceptions of Christian society spread concurrently with political and economic penetration. In the course of this process the standards became less rigid and the original religious sources less apparent. This two-fold development assisted in the transformation of these Christian standards into the moral norms common to all civilized nations.

In attempting to elucidate the positive functions fulfilled by international morality, we must bear in mind the conclusions derived from our analysis of the social background of the international society: that the inter-State system is ultimately governed by motive powers such as self-interest and self-preservation; that its supreme law is the rule of force. As international law is partially subservient to it, and partially irrelevant from the standpoint of power politics, it is probable that international morality is cast for a corresponding minor role.

An apt introduction to a realistic inquiry is perhaps provided by an assessment of the impact of the rule of force upon moral values in the international society.

This internexus was not strange to Grotius, who considers it in a chapter entitled: 'There are certain causes which present a false appearance of justice' in the following words: 'Others allege causes which they

claim to be justifiable, but which, when examined in the light of reason, are found to be unjust. In such cases, as Livy says, it is clear that a decision based not on right but on violence is sought. Very many kings, says Plutarch, make use of the two terms, peace and war, as if they were coins to obtain not what is right but what is advantageous. New causes which are unjust, may, up to a certain point, be recognized from the foregoing discussion of just causes. What is straight is in fact a guide to what is crooked.'

The Treaty of Utrecht, in which the balance imposed by the victors was called a '*justum potentiae equilibrium*,' or the Treaty of Chaumont between Austria, Great Britain and Prussia of 1814 in which the signatories pledged themselves to oppose France 'for the salutary purpose of putting an end to the miseries of Europe' and of 'securing its future repose, by re-establishing a just balance of power,' exemplify a complete identification of the interests of power politics and justice.

International morality has been indicted so frequently for its alleged subservience to vested interests, that it will suffice to refer to only one further instance: the alleged identification of the League Covenant with the interests of the *status quo* Powers. As Freiherr von Neurath, the former German Foreign Minister and Protector of Bohemia, stated the case for the 'have not' States, 'in the course of time it has become steadily clearer that the Powers which support and direct the Geneva institution have as their real aim not the introduction of a rule of law corresponding to the true needs of justice and of international relations, but rather, under cover of such an idea, the pursuit of particular interests.'

In a system of power politics, appeals to moral standards by statesmen would not occur so regularly if they did not serve some useful purpose. The question therefore arises: whom are the principles intended to impress? Other governments? In certain circumstances this

may be the case, although generally other governments, mostly equally skilled in this art, can be relied upon to penetrate to the underlying intentions. It is, therefore, more likely that these gestures are destined for the entertainment of those who are less strenuously participating in the dramas of international affairs: public opinion abroad and at home. To quote Mowat: 'Civilized Governments do not openly acknowledge themselves to be bandits or plunderers; they can always put forward a "case" in their favour. This they do, partly because they offer lip-service to the morality which in practice they ignore, and partly because, for political reasons, they do not wish to offend brutally the opinion of moral people in their own or other countries.' Other observers of international relations like Troeltsch, a German sociologist, arrive at the same conclusion. They admit that in our age of mass organization it would be scarcely possible for States to mobilize their citizens, particularly in the internecine struggles of modern warfare, without resort to some brand of ideology, borrowed from the realms of ethics and of philosophy of history. It follows that the main function of morality in the international society does not consist in the control of one's own behaviour but in the use of morality as a powerful weapon against potential and actual adversaries.

There are also positive aspects to this state of affairs; for it is implied in this statement that citizens who are imbued with the standards of reason and of individual morality possess a grade of morality which—measured by the principles of any altruistic ethical system—is loftier than that of their respective governments. Especially in democratic States, the widely spread knowledge of the discrepancy between collective and individual standards and the superiority of individual behaviour need not engender dejection and apathy; for it depends on each citizen whether he is ruled by power politicians or servants of a world community.

Furthermore, as Professor Radbruch, Germany's foremost legal philosopher, has convincingly shown, ideologies rarely fail to leave those interests unaffected. It becomes incumbent upon governments to refine their methods in order to avoid an over-brutal violation of the standards of international morality; on occasions, the insistence of public opinion has even prevailed upon them to moderate, at least temporarily, their actual policies. To this extent, the interests become secondary to the ideas which they have called to their assistance. In such exceptional cases, the influence of international morality exceeds even that of international law. As the latter is a set of highly technical rules, it has not that direct access to the imagination of the public which broad issues, such as good faith and justice, can claim.

In these circumstances the very need for international law, as separate from international morality, might be disputed. One might, however, equally enquire why municipal law should exist side by side with religion and individual morality. The answer supplied by Plato in *The Laws* still suffices: ' Mankind must either give themselves a law and regulate their lives by it, or live no better than the wildest of wild beasts, and that for the following reason. There is no man whose natural endowments will ensure that he shall both discern what is good for mankind as a community and invariably be both able and willing to put the good into practice when he has perceived it.' It might be objected that what holds good in the case of a mature system of law is invalid in a system which lacks effective sanctions. This proviso is admissible regarding that type of international law which is subservient to power politics. Yet it does not apply to those fields of this legal system, which rely on penalizations to which the character of real sanctions may be attributed.

It would be an attractive task meticulously to analyse the relationship between international law and morality. However, a perfunctory survey must needs suffice. When

international law served to bridge the disintegration of the medieval Commonwealth and the anarchy which seemed to threaten the European State system, the first stone was provided by international morality in the form of international law. It was sincerely believed that there existed certain external rules, valid, as Grotius expressed it, in the whole 'society of beings endowed with reason.' It followed that thinkers regarded themselves justified in propounding as existing and binding legal rules, coherent systems of what in reality they thought ought to be the law. In the words of Dean Pound, 'international law was born of juristic speculation and became a reality because that speculation gave men something by which to make and shape international legal institutions and a belief that they could make and shape them effectively.'

Slowly, however, this intimate connection relaxed under the strain of various forces—chief among which were the nation-States whose strength was perpetually increasing, and who were aspiring to unfettered sovereignty. Other factors which should not be ignored are the reaction against the ideological abuses of natural law and the naive identification of the natural law of the seventeenth and eighteenth centuries with *the* natural law, efforts at codification combined with conscious efforts for the reform of international law and last, but by no means least, the impact of empirical natural science upon the methods of social science.

In spite of the gradual ascendency of positivist doctrines, with their eminent suitability for any dogma of State independence, inter-State practice itself counteracted this development. International morality, though less treasured as a guide to one's own conduct, formed a weapon which diplomats were prone to use for the purpose of strengthening shaky legal positions. This explains why joint references to law and morality so often recur in international correspondence; it also explains the paradox that the practice of States became instrumental to a

process of reception of international morality by international law.

The extent to which international tribunals assisted in this development also calls for comment. We can here cite only a single incisive example: the interpretation of the terms 'law' and 'equity,' on which, in accordance with the Agreement concluded between the two countries, the Permanent Court of Arbitration had to base its decision in the case of the Norwegian Claims against the United States: 'The words "law and equity" used in the Special Agreement of 1921 cannot be understood here in the traditional sense in which these words are used in Anglo-Saxon jurisprudence. The majority of international lawyers seem to agree that these words are to be understood to mean general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any State.'

To some extent, and probably just as imperceptibly, the Permanent Court of International Justice in the post-1919 period has fulfilled functions analagous to those of natural law during the infancy of international law in contributing by its case law to the development of international law.

To recapitulate, it appears from our investigation into the functions of international morality that, in State practice, it is used primarily as an ideology cloaking, in deference to public opinion, policies of national self-interest and self-preservation. But it is useful to recollect that this ideology, in common with others, is also a reality with an automatism of its own. In addition, the connection between international morality and law has never been entirely disrupted and has proved one of the decisive factors in rendering possible the development of international law into a legal system of coherent norms.

It has been alleged by Mowat that other ages have been more fortunate than our own since they were not confronted with that cleavage between international and

individual morality which characterizes our modern State system. In order to perceive the limitations of this argument, it must be remembered that the Greek Commonwealth was essentially a closed society and that its statesmen never considered themselves bound by any moral ties in their political intercourse with ' barbarians.' The same applies to the Roman Empire which dealt with its border tribes in no different spirit. Similarly, the Middle Ages are in a special position since, at least theoretically, the loyalties towards the Christian community surpassed any obligations which might be incumbent upon the individual as a member of any sectional group, and these teachings were applied to relations with the non-Christian world only *cum grano salis*.

Yet the ascendency of the sovereign State has brought about a situation in which the Leviathan has successfully appropriated to himself the undivided loyalty of the individual. We are confronted with the co-existence of an international society and about sixty communities in which the principle ' Right or wrong, my country,' is supposed to solve the problem of international morality for the citizen.

The issue is further complicated by the existence among States of a sliding scale of moral values. This phenomenon causes a reduction of the rules governing actual conduct to the lowest possible denominator, whenever the more powerful States pertain to the lower categories and the remainder do not regard it as their vital interest to maintain and enforce certain minimum standards of behaviour in the international society.

Certain idiosyncrasies in the mass reaction towards international affairs are conducive to this situation. Still more than in private and internal life is the power of success effective in international affairs. There seems to be more than a grain of truth in Machiavelli's mournful observation: ' If a Prince succeeds in establishing and

maintaining his authority, the means will always be judged honourable and be approved by everyone. For the vulgar are always taken by appearances and by results, and the world is made up of the vulgar, the few only finding room when the many have no longer ground to stand on.'

In addition, the forces of passion and other irrational motives should not be underestimated in the reactions of individuals when forming part of a 'mass.' Political leaders may be rationally conscious of *raisons d'état*, which will finally predominate on account of the wide amount of discretion accorded even by democracies to their representatives in the conduct of foreign affairs. Yet public opinion is highly susceptible to irrational influences, which need not necessarily conflict with the interests of power politics. As Palmerston remarked: 'Nations, and especially republican nations or nations in which the masses influence or direct the destinies of the country, are enraged much more by passion than by interest and for this plain reason, namely that passion is a single feeling which aims directly at its object, while interest is a calculation of relative good and evil and is liable to hesitation and doubt. Moreover, passion sways the masses, but interest acts comparatively on the few."

Thus we are driven to conclude that the subordinate role of international morality is intimately connected with the co-existence of the international society with the some sixty States which engulf the loyalties of the individual. It follows that, if ever the standards of international morality are to be raised to the level of those governing the relations between citizen and citizen, the constructive problem turns on the transposition of these loyalties to the international society.

With this momentous task confronting our generation, we may find consolation in the wisdom of Señor de Madariaga:

'Readers of Don Quixote may remember the meeting

between the Knight and the Squire and a brigand in the vicinity of Barcelona. The knight and his squire observed that the virtues of justice were indispensable, even in an association of brigands, for the head of the brigands was bound to administer justice and equity in distributing the spoils of brigandage. If the virtues of justice and association are found indispensable even amongst brigands, we can hope that they will gradually raise the standards of nations which have so far behaved like collective brigands.'

SUGGESTED READINGS

BENTWICH, N., BUSTAMANTE, A. S. DE, MCLEAN, D. A., RADBRUCH, G. and SMITH, H. A. *Justice and Equity in the International Sphere.* 1936.

BURNS, C. D. *Authority and Force in the State System.* '*Problems of Peace*' (Eighth Series). 1934.

CARR, E. H. *The Twenty Years' Crisis.* 1946.

DAVIS, K. W. *The Soviets at Geneva.* 1934.

DEMIASHKEVICH, M. *Shackled Diplomacy.* 1934.

GLASGOW, G. D. *Diplomacy and God.* 1941.

HULL, C. *The Spirit of International Law.* 1938.

JERROLD, D. *They That Take the Sword.* 1936.

KRAUS, H. *Gedanken ueber Staatsethos im internationalen Verkehr.* 1925.

MOWAT, R. B. *Public and Private Morality.* 1933.

——*Diplomacy and Peace.* 1935.

NIEBUHR, R. *Moral Man and Immoral Society.* 1933.

SCHELER, M. *Die Idee des Friedens und der Pazifismus.* 1931.

SCHWARZENBERGER, G. *An American Challenge to International Anarchy: An Analysis of the U.S. Secretary of State's Declaration of July 16th, 1937, and of the Replies of Sixty-one Governments.* '*Transactions of the Grotius Society.*' 1938.

TEMPLE, W. *The Christian and the World Situation.* 1935.

WALLAS, G. *The Great Society.* 1914.

ZIMMERN, SIR ALFRED. *The Decline of International Standards.* '*International Affairs.*' 1938.

CHAPTER 5

THE FAILURE OF THE LEAGUE EXPERIMENT

'After the first world war there was a tendency to regard the League of Nations as something outside the ordinary range of foreign policy. Governments continued on the old lines, pursuing individual aims and following the path of power politics.'

(Mr. Attlee, 1946.)

THE decline of the League Covenant in the years prior to the Second World War is sometimes traced to the failure of the sanctions experiment during the Italo-Abyssinian War, and sometimes, still further, to the Manchurian Conflict. It is certain that both these events mark decisive phases in a development which can be described as a *de facto* revision of the Covenant. It seems, however, that a more comprehensive understanding of this phenomenon is obtained if it is viewed in a wider perspective. The radical incompatibilities between the Covenant and political reality existed since the League was created. The initial contradictions between the conception of a collective system as it was envisaged by the drafters of the Covenant and the political system laid down in the other parts of the Peace Treaties already foreshadowed the obstacles and the discrepancies between idea and reality which, subsequently, exposed the League to charges of inefficiency and to ridicule.

CONDITIONS OF SUCCESS

What was this 'duality of purpose' which, according to Ray Stannard Baker, dominated the Paris Peace Conference? The aim of the Covenant was to achieve the supreme rule of a community law. The methods of realization were envisaged in the trinity of peaceful settlement of international disputes (including peaceful change), collective security, and disarmament. It must be admitted that both the methods and the machinery

devised in pursuance of these objectives were far from adequate. For instance, political disputes were to be settled under a procedure of conciliation; yet, in the event of failure of conciliation, no provision was made for any of the League organs to impose a final settlement. In addition, Article 19 of the Covenant was restricted to recommendations for revision, and military sanctions were optional and not automatic. Again, the old conception of sovereignty was maintained by reserving the most acute conflicts, such as those concerning raw materials, markets or migrations, to the sphere of domestic jurisdiction, thereby imposing a dangerous restriction upon the competence of the international community. A further impediment to the collective system was the unanimity rule, even if this had not been interpreted in accordance with the disastrous League practice of including the votes of the disputing parties (with the notable exception of the Advisory Opinion given by the Permanent Court of International Justice regarding the Mosul conflict).

Yet such a Covenant, although embryonic and in many respects imperfect, could have been made to form a working basis, granting certain assumptions and implied conditions, which were clearly recognized during the drafting period by the leading members of the League Committee to which the Peace Conference had entrusted the drafting of the Covenant.

First, power politics, alliances and policies of imperialism are as compatible with a community law as fire and water. On this point, in his ' Practical Suggestions for a League of Nations,' General Smuts was outspoken: ' I would put the position broadly as follows: The process of civilization has always been towards the league of nations. The grouping or fusion of tribes into a national State is a case in point. But the political movement has often gone beyond that. The national State has too often been the exception. Nations in their march to power tend to pass

the purely national bounds; hence arise the empires which embrace various nations, sometimes related in blood and institutions, sometimes again different in race and hostile in temperament. In a rudimentary way all such composite empires of the past were leagues of nations, keeping the peace among the constituent nations, but unfortunately doing so not on the basis of freedom but of repression. Usually one dominant nation in the group overcame, coerced, and kept the rest under. The principle of nationality became overstrained and over-developed, and nourished itself by exploiting other weaker nationalities. Nationality overgrown became imperialism, and the empire led a troubled existence on the ruin of the freedom of its constituent nations. That was the evil of the system; but, with however much friction and oppression, the peace was usually kept among the nations falling within the empire. These empires have all broken down, and to-day the British Commonwealth of Nations remains the only embryo league of nations because it is based on the true principles of national freedom and political decentralization.' Equally emphatic was President Wilson in his Five Particulars: 'There can be no leagues or alliances or special covenants and understandings within the general and common family of the League of Nations.' He repeated this warning on January 25th, 1919, in the Plenary Session of the Peace Conference: 'We are here to see, in short, that the very foundations of this war are swept away. Those foundations were the private choice of small coteries of civil rulers and military staffs. Those foundations were the aggression of great Powers upon small. Those foundations were the holding together of empires of unwilling subjects by the duress of arms. Those foundations were the power of small bodies of men to work their will upon mankind and use them as pawns in a game. And nothing less than the emancipation of the world from these things will accomplish peace.'

Secondly, the economic foundations of the inter-State

system were a decisive factor. The third of Wilson's Fourteen Points reveals what the Father of the Covenant had in mind: 'The removal so far as possible of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.' This tenet of free trade found its only expression in the Covenant in Article 23 (e), according to which the members of the League 'subject to, and in accordance with, the provisions of international conventions existing or hereafter to be agreed upon' bound themselves to 'make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League.' The Conference refused the various current suggestions which were designed to give the League wider competence in affairs of an international economic and financial nature, and preferred to concentrate upon the erection of the political superstructure. Yet a problem of major importance continued to depend on the realization or maintenance of this condition. For even a liberal system of free trade can only survive over an extended period, if at least its premises are protected by conscious efforts at joint planning which impede their overthrow by sectional economic or political interests.

The third and perhaps the most important implied condition is what Dr. Nicholas Murray Butler has defined as the international mind, or the mental outlook congenial to a community system. This *sine qua non* of the Covenant was emphasized in Article 1, par. 2, of the British Draft of the Covenant: 'In considering any such modification the League shall take into account changes in the present conditions and aspirations of peoples or present social and political relations pursuant to the Preamble that Governments derive their just powers from the consent of the governed, and shall be guided by the principle which the High Contracting Powers accept without reservation, that

the growth among all peoples of a sense of their duties as members of a corporate society is superior in importance to every question of political predominance or historical claims.' Reference is also made to this need for spiritual metamorphosis in a letter written by Mr. Harold Nicolson from Paris during the Peace Conference: 'You see, you have got to get a "League temperament," ready to help me when I become too national and anti-dago. If the League is to be of any value it must start from a new conception, and involve among its promoters and leaders a new habit of thought. Otherwise it will be no more than the continuation of the Conference—where each delegation subscribes its own point of view and where unanimity can be secured only by a mutual surrender of the complete scheme. We must lose all that, and think only of the League point of view, where Right is the ultimate sanction, and where compromise is a crime. So we must become anti-English when necessary, and, when necessary, pro-Italian. Thus when you find me becoming impatient of the Latins you must snub me. It is rather a wrench for me—as I like the sturdy, unenlightened, unintellectual, muzzy British way of looking at things. I fear the "Geneva temperament" will be rather Hampstead Garden Suburb—but the thing may be immense.'

At least one further basic condition merits serious consideration. There was a strong tendency in 1919 to take it for granted that the League would attain from the outset a state of relative universality. Nobody seriously considered the possibility of the defection of the United States from the collective system. The attitude adopted by the United States, however, was closely linked with the discrepancies between the Covenant and the Peace Settlement itself. Another reason why we are inclined to reject relative universality of the League as an additional implied condition of the proper functioning of the Covenant, is that the collective system did not even work smoothly in circumstances in which it was obvious that

the absence of universality could only to a minor extent have occasioned the failure of League action.

Not only was the machinery of the community system defective and the implied conditions of the Covenant but distantly fulfilled at the time of the launching of the League experiment, but also the Peace Treaties themselves formed a half-way house between a community approach to the problems facing the Peace Conference and undiluted power politics. Thus, these settlements were neither able to assist in the integration of a proper international community nor did they forestall the resurgence of the vanquished powers.

THE POWERS AND THE LEAGUE

What were the reactions of the Powers to this strange compound of the rule of law and the rule of force?

To France and her Eastern satellites, the maintenance of the territorial *status quo*, together with the hegemonial system created by the Peace Treaties, appeared as the *raison d'être* of the Covenant. Hence they were the prime instigators of the process tending to the identification of the League with the Peace Treaties.

British statesmen rapidly became aware of the grotesque and dangerous situation, which, in their opinion, could become acclimatized to reason only through the strengthening of dynamic tendencies. Imbued as they were with the traditional conceptions of the balance of power, they were suspicious of the idea of a community system proper, which appeared to them to be an impracticable and utopian dream. It is not surprising, therefore, that they attempted to ward off the unpleasant contingency by their support of tendencies towards the formation of a relatively stable balance of forces. The Washington Treaties on the Pacific (1922) and the Locarno Agreements (1925) best exemplify this trend, which is again clearly discernible in British policy *vis-à-vis* the U.S.S.R. and in the British attitude regarding German reparations.

Italy, with the cynicism apposite to Fascism, was the first League member to remind the world that the community system of Geneva could not be applied against Greater powers. As Grandi expressed it, 'at Corfu the Duce fired his gun, not to intimidate Greece, but to intimate to Europe that it was time to halt for a moment to consider Italy's international position.' The decision of the Conference of Ambassadors on Italy's special position in Albania—a fellow member of the League—the policy adopted by Italy against Greece, the understanding in respect of Abyssinia arrived at by Italy and Great Britain in 1925 and only cancelled after a strong protest from the Negus, and the agreements concluded between Mussolini and Laval in January, 1935, had at least one feature in common: the consistent and indefatigable pursuance, in the best traditions of power politics, of a policy of aggrandizement which directly contravened both the letter and the spirit of the Covenant.

With Japan, it must be admitted that exigencies exceeded those of Italy, since the former country was especially affected by two flaws in the collective system. These consisted in its incompetence in matters of immigration and its incapability to realize one of the implied conditions of the Covenant: freedom of trade. Free competition became increasingly vital for Japan when, in view of the impossibility of large scale emigration, she was forced to industrialize at the highest possible rate of intensity. It should not be overlooked either that the Peace Conference had been partly responsible for the inculcation of an inferiority complex into Japan by its rejection of the Japanese demands to recognize the principle of racial equality as one of the fundamentals of the new community system.

Small States fell into one of two groups, according to whether they pertained to the category of neutral States, which only in exceptional cases such as Denmark benefited territorially from the Peace Treaties, or whether, as in the

instance of the Eastern and South Eastern neighbours of Germany, they were the creations of these settlements. Whereas the former could only gain real independence and security through a community system proper, the latter deemed it prudent to rely primarily upon military alignments with France, the protagonist of the Versailles order, and to revere the Covenant in so far as it was the embodiment of Articles 10 and 16, but at the same time to interpret their corollary, Article 19, as an epitome of bad taste or as a veiled bellicose threat.

It is no miracle, therefore, that in the territories of the former Central Powers, especially in Germany, and also in States such as Italy and Japan which were dissatisfied with their share of the spoils, the League was arraigned as a new ideological smoke-screen which served as a first line of defence for the vested interests which the settlements of 1919 were designed to protect.

An attitude of still more intense suspicion prevailed in the U.S.S.R., whose rulers were convinced only after a long period that the employment of the League for aggressive ends directed against themselves depended as much on their own readiness to co-operate or preference to remain aloof as on any forces hostile to Russia and her social system.

Probably no other factors contributed so much in the United States of America to the strengthening of isolationist tendencies as aversion to these European power politics in disguise, together with a profound disappointment at the results of a war fought to end war. Spasmodic efforts on the part of the United States of America to rectify this state of affairs, for instance by participating in the Disarmament and World Economic Conferences and in the various non-political activities of the League, could not compensate for their indifference towards matters in which the positive influence of this Power might at least have assisted in reducing French hegemony on the Continent to *one* force within a world balance system.

It was inevitable that this tendency should affect the Covenant with increasing frequency, until gradually even the lip-service which had been customarily paid to it in the initial stages fell into disuse.

In the light of unrestricted power politics, the most embarrassing clause was that pertaining to sanctions. Article 16 was still taken seriously when the Second Assembly attempted to tone down its formidable character by means of interpretative resolutions which, not being tantamount to formal alterations of the Covenant under the procedure of Article 26, could be ignored in so far as the legal obligations of the member States were concerned, and at the same time by their very existence procured the desired political effect: to weaken the belief in a system of sanctions which automatically operate against any transgressor. One of the resolutions contained the sentence that 'it is the duty of each member of the League to decide for himself whether a breach of the Covenant has been committed,' and cleared a path for those many negotiations and understandings (which are of inestimable value in a system of power politics, but incompatible with a community law), regarding the question of whether, in an actual case, a State would honour its legal obligations, or whether, with the reverse effect, it might be induced to make use of the discretion accorded by the interpretative resolutions.

The Award of the League Council in the *Upper Silesia* case between Germany and Poland, the passivity of the League during the occupation of the Ruhr, the incorporation of Vilna into Poland, the Lithuanian *fait accompli* in Memel, and most provocative of all, the Italian bombardment of Corfu, are illustrative of the functioning of the League system in its first years of existence.

Although marked to a lesser degree by flagrant violations of the Covenant, even the Locarno period provides

material for the thesis that this stage could only be distinguished from the preceding one by the more dignified and more tortuous methods which the European powers devised to cover their return to power politics. First, the Locarno agreements themselves, though made dependent on Germany's membership of the League, were the exclusive work of the interested chancelleries. The League was merely asked to bestow its blessing, thereby qualifying the agreements as regional undertakings in the idiom of Article 21 of the Covenant. Secondly, the intrinsic conception of these treaties relegated them to a past which thought in terms of guarantees and balance of forces. Thirdly, the ensuing scramble over Germany's seat on the Council, a move which was counterbalanced by the admission of Poland, was indicative of the extent to which the members of this body were concerned with questions of majorities and alignments. Fourthly, the signatories of the Locarno treaties agreed on yet another interpretation of Article 16 of the Covenant, according to which the geographic and military position of Germany was to be taken into account whenever the Article was to be applied. The effect of this concession made by signatories 'not in a position to speak in the name of the League,' was to strengthen the tendency, apparent in the interpretative resolutions of 1921, to stress the flexible character of the obligation by introducing discretionary elements which were absent from the text of Article 16, paragraph 1 of the Covenant.

In spite of its description as the period of recovery or the period of fulfilment, the period of 1925-1930 was not free from wars between League members. The unwillingness of members of the League to bring to reason Bolivia and Paraguay, the belligerents in the Chaco War, was largely attributable to the return to power politics on the part of the European powers. Argentina withdrew her active collaboration, after her suggestions for extending the scope of League membership had received a far from

cordial reception in the first and second Assemblies. Admittedly, these proposals were not suitable for adoption in the form in which they were first raised. Yet the final committee report admitted that the technical barriers were surmountable, and that the real reason for their unacceptability were bound up with 'the actual moral and political conditions of the world.' Only the express protest of the Swiss delegate prevented the inclusion in the Committee's report of a passage assigning the inexpediency of these proposals to the plea that the idea of the universality of the League was incompatible with the present conditions of the world. Similarly, Brazil resigned her membership on account of the undignified struggle for Council seats which preceded Germany's admission to the League of Nations.

This period also witnessed the first post-1919 instance of a unilateral denunciation of treaty obligations, when Persia shook off the capitulations, which conceded consular jurisdiction and other privileges to foreigners in that country. No endeavour was made by the interested powers to induce Persia to submit her case to a procedure of revision within the framework of the Covenant. The lethargic attitude of the *status quo* powers in this case created a precedent of which other powers in similar circumstances did not remain unaware.

Thus opportunity alone was wanting for the expansionist powers to dazzle the world with the real weakness of the collective system. In the Far Eastern Conflict the aggressor followed the line of least resistance. The Japanese *coup* was assisted by the non-universality of the League (the U.S.S.R. had not yet joined), and the fact that the two greatest naval powers were not prepared to employ their fleets even in order to support the application of economic sanctions.

If the Disarmament Conference, another notable attempt within this period, purported to be more than a sop to the Cerberus of world opinion and to the countries

unilaterally disarmed under the Peace Treaties, the endeavour could only provide glaring evidence of a lack of insight into the indispensable conditions of disarmament. These consist in a complementary system of, first, effective machinery for peaceful change in order to induce revisionist states to lay aside their only means of achieving alterations of a *status quo* to which they are not prepared to subscribe indefinitely; and, secondly, of collective security to serve as a guarantee for the *status quo* powers in order to reinforce them against unreasonable demands from the 'have not' States. Any attempt to anticipate the consequences of a system providing equally for both stability and change was bound to end in failure. The outcome debased still further the value of the existing League currency, and the image of the collective system believed to be engraved upon it.

Thus it becomes apparent that the period which followed only intensified and brought into prominence a development whose threads can be followed back into the labyrinth of the incompatibilities of the Peace Treaties.

The Italo-Abyssinian War would have been inconceivable had it not been for the ambiguities of the Stresa Conference and of the Italo-French understandings associated with the name of Laval. The action taken by Mussolini did not differ in kind from his bombardment of Corfu, or from the Japanese aggression perpetrated against China in Manchukuo. Only the Duce's legal pretexts were still flimsier than those used in these conflicts, and the desire of Italy to wage war in order to construct an empire of her own was less deferentially masked. The governments of Great Britain and France, urged by the pressure of general indignation to take a stand, were either frustrated by great deficiencies in their information services regarding the likely effects of the sanctions applied and the probable duration and capacity of Abyssinian military resistance, or else they intentionally restricted their concerted efforts to a demonstration of

collective failure. The reasons of state for this manœuvre can be surmised, but are at present still beyond the scope of objective analysis. Whatever may be said in favour of, or against, the policy adopted by the sanctionist powers, a fact which is essential to our thesis remains: that not even economic sanctions were applied by the members of the League comprehensively, automatically and simultaneously, as laid down in Article 16, paragraph 1 of the Covenant. Sir Samuel Hoare's clarion call to the Assembly in 1935 applies to this instance, as to others preceding and following the Italo-Abyssinian War: 'The League is what its Member States make it. If it succeeds, it is because its members have, in combination with each other, the will and the power to apply the principles of the Covenant. If it fails, it is because its members lack either the will or the power to fulfil their obligations.'

Still more closely connected with the background of power politics was the attitude of the European States, in their capacity as members of the League, towards Hitler's successive violations of the Versailles system. It was hard to register high moral indignation at Germany's unilateral rearmament, when it was stipulated in the Treaty of Versailles that the disarmament of the German Republic could be justified only as a preliminary measure 'in order to render possible the initiation of a general limitation of the armaments of all nations.' Equally difficult was it to maintain indefinitely the unilateral demilitarization of the Rhineland or of any other zone, and at the same time to condemn any reciprocal concession to be made by Germany's neighbours as an unrealistic proposition. In either case, there was little moral justification to enforce the objective of the League, as outlined in the Covenant, of 'a scrupulous respect for all treaty obligations.' Hitler could turn to his own uses the peace guilt complex of the *status quo* powers, since one, Great Britain, had never been entirely convinced of the wisdom of these clauses, and the other, France, was no longer in a position to arrest in its

initial stages a development tantamount to a transference of hegemony in Europe. Shock tactics and week-end surprises, as facets of a policy with clearly limited and at first, apparently, not unreasonable ends, proved superior to the cumbrous machinery of the Covenant and Locarno Treaties. This policy was strengthened by skilful use of the strategy of diversion, which enabled the Powers of the Axis and later of the Triangle working in parallel and probably concerted action, to restrict the *status quo* powers to a choice between passive submission to treaty infractions or the risk of a major war (or, to formulate the alternative in the idiom of less cautious observers, of calling the bluff of two countries which at that time were far from being prepared for such a contingency). The cumulative effect of these unilateral acts was grievously to injure the prestige of the European democracies, to increase the insecurity of the smaller powers, and in general, to annihilate belief in collective action and in the pledged word of statesmen.

The adaptability of the methods employed by the expansionist Powers became evident in the Spanish War, when their intervention on behalf of the rebels was thinly shielded behind the strange phenomenon defined by Mr. Noel-Baker as 'the totalitarian volunteers.' From the beginning, it was scarcely possible to doubt that the war in Spain was an international war. As early as autumn, 1936, a note from the Portuguese Government, which had no Republican leanings, contained the remarkable passage: 'Why should we deceive each other? The civil war in Spain is an international war.' Had the Covenant been applied both in letter and spirit, even a civil war would have come within the competence of the League. Under Article 11, paragraph 2, it was permitted to each member of the League, to bring to the notice of the Assembly or Council 'any circumstance whatever affecting international relations which threatens to disturb international peace or the good understandings between nations upon

which peace depends.' Still more clearly was the League the appropriate organ, once the incontestable facts of foreign intervention were officially admitted by League Members. In view, however, of the disinclination of Germany and Italy to participate in any collective action under the ægis of the League, the Powers set up machinery, completely unconnected with Geneva, within the framework of the non-intervention agreements. The anomaly of such an arrangement has been well stated by Professor Lauterpacht: ' In as much as Italy and Germany undertook not to supply the rebellious forces with munitions of war, these agreements consisted in an undertaking on the part of certain powers to refrain from committing an international illegality in consideration of the promise of other powers to refrain from acting in a manner in which they were entitled—and according to some, legally bound—to act.'

Assuming that the aims of the Covenant could be secured through the establishment of a separate organization, and that international delinquencies could be prevented by paring down the discretionary powers of all governments concerned, it could be argued that the ends merited the recourse even to extraordinary procedures. When the new course was inaugurated, it was maintained by the protagonists of non-interventionist policy that the aim of this device was to restore the civil nature of the war, an objective whose fulfilment would also have devolved upon the League, had it been concerned with the matter. Soon, however, the weight of the argument was shifted, and it was suggested that the purpose of non-intervention was ' to neutralize and localize this war and to prevent it spreading to Europe as a whole.' (Mr. Eden in the House of Commons, November 1st, 1937.) It is doubtless possible to contend that there is a close similarity between a policy which purports to prevent the extension of a war, and one which is directed at the restoration of its civil character. Nevertheless, there

remains the significant contrast between endeavours to eliminate an international conflict as such, by means of reducing it to a civil war proper, and efforts tending to localize an international war. The latter objective has repeatedly been attained in the balance of power system; the former falls within the scope of a collective system proper. When, during a later phase of the Spanish War, the limitation of the war area could only be achieved at the price of practically unlimited intervention on behalf of the insurgents, this new halt between the rule of force and the rule of law, euphemistically termed collective neutrality, collapsed as completely as its predecessors, and its net result was the acquisition of new strategic positions by the expansionist powers.

Whereas in this instance some members of the League tried to placate their self-respect and public opinion on the plea that the fact of aggression was doubtful in the case of intervention in a civil war, they could not use so convenient an excuse in the model case of the Sino-Japanese War. Here the aggressor acted openly, without consulting any of the rules of etiquette obtaining in Europe. It was impossible either to doubt the identity of the aggressor or the international character of the war. Yet the result was about as negative as in the case of the Spanish War. Although the Chinese appeal to the League expressly referred to Article 17, and was therefore indirectly based on Articles 12 to 16, the only direct action taken by League members in the autumn of 1936 was to subscribe to a pious resolution in which they assured China of their 'moral support.' Again, it was left to a conference of the interested Powers, outside the orbit of the League, to take any further action that might have been deemed advisable. It is remarkable to find the Assembly condoning its inactivity by a reference to Article 3, paragraph 3, which expressly states its competence to deal 'with any matter within the sphere of action of the League or affecting the peace of the world.' This Article,

the corresponding Article defining the powers of the Council (Article 4, paragraph 4) and Article 11, do not possibly lend themselves to the interpretation that they limit or supersede the more specific obligations undertaken by members of the League under Articles 12 to 17. What China had to expect from the Asiatic member of the Triangle had been outlined by the Japanese Foreign Minister with the explicitness which marked the diplomacy of this anti-League: 'As regards the present China affair, what Japan desires is a creation of a new order which has to secure permanent peace in East Asia; that is to say, the construction of a new East Asia upon an ethical foundation, in which Japan, Manchukuo and China, while each fully preserving her independence and individuality, will stand united and linked together for active collaboration and mutual aid along the lines of political, economic and cultural activities. It is the firm conviction of the Japanese Government that such a new order is not only absolutely necessary for the existence and healthy development of Japan, Manchukuo, and China, but also conducive to the real peace and well-being of the whole world.'

The incorporation of Austria into Germany demonstrated to perfection the dynamic tactics upon which the Axis relied in Spain. Once more, the League Members were paralyzed by the attitude they had adopted towards the principle of national self-determination when Austria and Germany had decided to unite in 1919, and by the veto imposed on the customs union which these two countries had contemplated in 1931.

The success of the move invited its repetition in Czechoslovakia, the barrier blocking the political expansion of Germany in Eastern and South-Eastern Europe. Again, the principle of national self-determination served as pretext. Whatever merit this doctrine may possess, it is amazing that Hitler was not once reminded that he was hardly entitled to base claims on this principle. It may

be maintained that the principle is a liberal conception, originating as it does from the religious settlements of the sixteenth and seventeenth centuries. It may also be contended that it is a Bolshevist idea, if one bears in mind the use made of it by the U.S.S.R. both at Brest-Litovsk and subsequently. But it was hard to define it as a National Socialist principle, if the conception of the superiority of the Nordic race formed an intrinsic feature of this '*Weltanschauung*.' Even granting that the argument is dialectical, and that there is free and universal access to the Wilsonian tenets, there remains the problem of the admissibility of selecting only one point out of fourteen, without being called to order on the ground that Wilson's Fourteen Points stand and fall as a whole.

In spite of the fact that the Minority Treaty concluded with Czechoslovakia provided for its revision within the framework of the League of Nations, yet again machinery for the settlement of an impending conflict was improvised outside the League orbit. As the disastrous failures of the Runciman mission and of the Munich Agreement are by now universally accepted, this interlude between an independent Czechoslovakia and the temporary establishment of the German Protectorates merits attention to-day because of the anomaly apparent, even from the angle of power politics, in the Munich settlement itself. The situation before Munich did not even faintly resemble a balance of power. Practically the whole world was united against two, or at the most, three countries. Nevertheless, these latter scored points to an extent which in a system of power politics normally only pertains to the fruits of victory in war. The position of inequality in strength and resources, however, was converted into one of formal equality through resort to the principle of the artificial balance, created, in this instance, by excluding from the Conference room one Greater power and one disputant, who belonged to the same side of the 'balance.' The deficiency in resources and power on the one side was

more than counterbalanced by the other's face-value estimation of its opponents' strength, however erroneous this might ultimately have proved. Thus the basis for a settlement was provided by the assumed or real readiness of the one side to begin a world war for the fulfilment of apparently limited objectives and the willingness of the other to sacrifice liberally for its avoidance.

A further illustration of this policy was provided by the Italian invasion of Albania. In this instance, the discrepancy between a community system proper and the decision of the Conference of Ambassadors to grant to one Member of the League a special sphere of influence and political predominance in the country of a co-member of the same League, exceeds in kind the discrepancy between the virtual protectorate subsequently established by Italy over Albania and the overt annexation of the country after Italy's nominee as King of Albania had proved less pliable than his sponsor had expected. This aspect of the League's system is also stressed in Judge Anziottis' dictum in the *Anschluss* Case: ' The legal conception of independence has nothing to do with a State's subordination to international law or with the numerous and constantly increasing states of *de facto* dependence which characterize the relation of one country to other countries.'

THE DE FACTO REVISION OF THE COVENANT

What is the common denominator of these events, which although distinct from one another, are strangely alike in their effect upon the League? During the first decade of the collective system, the *status quo* Powers were paramount. So long as they were strong enough to prevent unilateral treaty denunciations and resort to armed force as a means of change the collective system appeared to be a reality. Disturbances of tranquillity were exceptional, and the mere absence of war was

mistaken for peace. Public opinion and 'experts' were deluded into assuming that a collective system could function without reliable machinery for peaceful change and without the application of the principle of reciprocity either to disarmament or rearmament. The maintenance of the *status quo*, equivalent to French hegemony on the Continent, was mistaken for an effective League of Nations. As the potentially expansionist Powers came to realize the situation, they proceeded along the psychological line of least resistance, which led, on the grounds of redress of alleged injustices, to modifications of the existing political situation at first regarded by the *beati possidentes* as peripheral and unimportant. At this stage the reappearance of the 'have not' States on the world chessboard evoked an almost sympathetic response in those statesmen to whom the conception of a collective system evidently appeared hallucinatory. It was hoped that the increasing strength of nations such as Italy, Germany and Japan might effectively contribute to the establishment of a new balance system and, incidentally, prove a useful counterpoise to the *bloc* formed by the U.S.S.R. Possibly this policy should not be attributed to any conscious scheme, but merely to the expression of undue complacency and saturation. It has also been assigned to a manifestation of sincere pacifism, whose dogma does not allow even a menace to vital political and strategical points to serve as a justification of a preventive major war. All these interpretations are permissible; the verdict as to the motives, however, is one of *not proven.* In any case, this attitude tended to condone attempts at empire building made by these late-comers in the imperialist arena.

In contrast, the *effect* of this development is clearly discernible. The League Covenant was based on the conception of the indivisibility of peace (Preamble, par. 1; Article 3, par. 3; Article 4, par. 4; Articles 11 and 17) and on the assumption that a violation of the Articles

enumerated in Article 16 could be redressed if the League members were willing jointly to apply economic pressure. In the course of the process described above, there was an increasing tendency for the centre of gravity to shift from indivisible to individual peace. Statesmen, with considerable support from public opinion, reached the conclusion that it was simpler, safer and less costly not to obstruct individually the paths of the expansionist powers, but to rearm to the best of their abilities and resources in order to divert aggression to a more vulnerable victim, and, for the rest, to hope for the best. As the then British Prime Minister said in the House of Commons on February 22nd, 1938, 'if I am right, as I am confident I am, in saying that the League as constituted to-day is unable to provide collective security for anybody, then I say we must not try to delude ourselves, and, still more, we must not try to delude small weak nations into thinking that they will be protected by the League against aggression and acting accordingly, when we know that nothing of the kind can be expected.'

The repercussions of such an attitude upon the smaller States, the 'consumers of collective security,' were profound. No longer could these States safely rely on the support of the more powerful *status quo* powers. Their anxieties were voiced by the then Foreign Minister of Sweden, one of the most loyal of League members, as follows: 'In present circumstances I think the situation necessitates our reckoning both with the League functioning according to the provisions of its Covenant at a critical moment and being prepared for it breaking up in conflicting coalitions. We must in this respect reserve our freedom of action.' Again, according to the Swiss Memorandum of April 29th, 1938, that country 'will continue to collaborate with the League in all questions in which her status as a neutral country is not involved; but she considers herself entitled to ask that her absolute neutrality be explicitly recognized within the framework of the

League.' In brief, the choice for these States lay between a policy of complete neutrality, if they were sufficiently strong and independent, and one of *rapprochement* towards the expansionist powers with dubious results.

The common denominator of the whole development may be described as a process of *de facto* revision of the League Covenant. Nations still professed their moral concern for international peace, even subscribed to pious resolutions, offered their mediation in accordance with Article 11 and were prepared to resort to war for certain objectives considered vital in the interests of power politics. Yet it could no longer be expected that, irrespective of such considerations, League members would fulfil their obligations under Articles 12 to 16 of the Covenant. This attitude found clear expression in the Declaration made on behalf of the British Government in the Sixth Committee of the 1938 Assembly:

'(i) The circumstances in which occasion for international action under Article 16 may arise, the possibility of taking such action and the nature of the action to be taken cannot be determined in advance. In consequence, while the right of any member of the League to take any measures of the kind contemplated by Article 16 remains intact, no additional obligation exists to take such measures.

'(ii) There is, however, a general obligation to consider in consultation with other members of the League whether, and if so how far, it is possible in any given case to apply the measures contemplated by Article 16 and what steps, if any, can be taken in common to fulfil the objects of that Article.

'(iii) In the course of such consultation each member of the League would be the judge of the extent to which its own position would allow it to participate in any measure that might be proposed, and in doing so it

would no doubt be influenced by the extent to which other members were prepared to take action.

'(iv) The foregoing propositions do not in any way derogate from the principle, which remains intact, that a resort to war, whether immediately affecting any members of the League or not, is a matter of concern to the whole League and is not one to which the members are entitled to adopt an attitude of indifference.'

It is possible to argue that such a *de facto* revision is a strange hybrid between fact and law. Yet, the reverse process is quite familiar to international lawyers. In a gradual transformation, usages of long standing crystallize into customary law, passing through innumerable stages whose distinguishing features are almost imperceptible. Although it would be quite erroneous to construe each infringement of international law as a sign of its modification, the development outlined above presents a continuity which it is difficult to ignore, and there is little doubt that even an international treaty may fall into desuetude. With the completion of such a process, a *de jure* revision has taken place. In order to forestall such an interpretation, in the British Declaration cited above the express reservation was made that 'the text, structure, and juridical effect of the Covenant remain unaltered,' and the less rigid interpretation of its obligations was only justified by reference to 'the special circumstances existing at the present time.' Other countries, and not merely the victims of the various acts of aggression, violently protested against this debasement of the collective system and still maintained that 'the Covenant as it is, or in a strengthened form, would in itself be sufficient to prevent war if the world realized that the nations undertaking to apply the Covenant actually would do so in fact.' (Note to the League from the New Zealand Government, July 16th, 1936).

The transitory nature of this development may also be

illustrated by the work of the Reform Committee, established by the League Assembly of 1936. Its function was to prepare as soon as possible a report, with the purpose of strengthening 'the authority of the League of Nations by adapting the application of these principles to the lessons of experience.' At the time when the Assembly passed this resolution, the failure of the sanctions experiment directed against Italy was regarded as *the* experience in the light of which the Covenant should be remodelled. While the Committee was engaged in this work, the pace of the expansionist powers quickened, and the ensuing deterioration in the general situation lent to the Committee's work a grotesque unreality.

If the work of the Committee did not, and indeed of such circumstances could not, achieve practical results in major importance, it prepared the way for the formal separation of the Covenant from the Peace Treaties, a gesture which might have had some psychological effect in the era of the Weimar Republic, and which, coupled with other constructive efforts, might have served a useful purpose before 1936. In the atmosphere of September, 1938, however, it was inevitable that this 'reform' should appear as a symbol of League obsequiousness. In addition, dealing with various aspects of the Covenant, the *rapporteurs* produced memoranda which were illuminating from the point of view of research. Further, the detailed discussions which took place in the Committee gave scope for an assessment of the strength of the various shades of opinion on the transformation of the *de facto* revision of the Covenant from a social into a legal reality. The supporters of such an alteration, who were led by the Chilean representative, favoured a revision of the Covenant which would have changed the League into a non-coercive and purely consultative body. Yet the resistance of those countries which either adhered to the orthodox interpretation of the Covenant, or emphasized the exceptional nature of the difficulties endured by the

collective system, proved strong enough to impede for the time being the completion of the process of revision.

The Second World War did not materially affect this situation. Poland did not consider it worth while to bring the Nazi aggression to the attention of the League. The British Empire and France merely notified Geneva of the fact that they were at war with Germany in view of her attack on Poland. When Denmark, Norway, The Netherlands and Belgium shared the same fate, nothing was heard from the League of Nations. Thus, it would have been possible to assume that the League machinery had been quietly liquidated, had it not shown unmistakable signs of life, when the U.S.S.R. attacked Finland. The League Assembly condemned the action of the U.S.S.R. and appealed to the members of the League 'to furnish Finland with all the material and humanitarian assistance which they can give and to abstain from all action that might weaken the power of resistance of Finland.' The League Council associated itself with the attitude taken by the League Assembly against the U.S.S.R. and, for the first time in the history of the League of Nations made use of the weapon of expulsion. Norway and Sweden refused the Anglo-French request to grant passage to their contemplated expeditionary force, and the Allies did not seriously dispute the right of these Scandinavian States to act in this manner. Until, therefore, the League of Nations was formally wound up, the political parts of the League system remained in the twilight of an uncompleted *de facto* revision. However ambiguous the legal aspects of the matter may be, the political lessons are plain to anyone who does not prefer to close his eyes.

SUGGESTED READINGS

ARNDT, H. W. *The Economic Lessons of the Nineteen-Thirties.* 1944.
BAUER, O. *Zwischen zwei Weltkriegen?* 1936.
BIRDSALL, P. *Versailles Twenty Years After.* 1941.
BONSALL, S. *Unfinished Business,* 1944.

BUTLER, H. *The Lost Peace*, 1941.
CECIL, LORD. *A Great Experiment.* 1941.
DAVIES, LORD. *Nearing the Abyss.* 1936.
FRASER, L. *Germany Between Two Wars.* 1944.
FRIEDRICH, C. J. *Foreign Policy in the Making.* 1938.
GOOCH, G. P. *The Grouping of the Powers.* '*Contemporary Review.*' 1938.
KEETON, G. W. *China, the Far East and the Future.* 1943.
MORGAN, J. H. *Assize of Arms.* 1945.
PADELFORD, N. J. *International Law and Diplomacy in the Spanish Civil Strife* 1939.
SCHUMAN, F. L. *The Nazi Dictatorship.* 1935.
——*Europe on the Eve.* 1939.
——*Night over Europe.* 1941.
SCHWARZENBERGER, G. *The League of Nations and World Order.* 1936.
SETON-WATSON, R. W. *Britain and the Dictators.* 1938.
SMITH, H. A. *The Real Weakness of the League.* '*The Nineteenth Century and After.*' 1936.
VIGILANTÉS. *Between Two Wars?* 1939.
WRIGHT, Q. *The Causes of War and the Conditions of Peace.* 1935.
ZIMMERN, SIR ALFRED. *The League of Nations and the Rule of Law.* 1939.

CHAPTER 6

A NEW START

'The immediate object to be kept in view is to inspire the States of Europe, as long as we can, with a sense of the dangers which they have surmounted by their union, of the hazards they will incur by a relaxation of vigilance, to make them feel that the existing concert is their only perfect security against the revolutionary embers more or less existing in every State of Europe; and that their true wisdom is to keep down the petty contentions of ordinary times.'

(Viscount Castlereagh, 1815.)

THE Napoleonic wars produced the ideology of the Holy Alliance and the reality of the Concert of Europe. The First World War led to the League of Nations and to a system of world power politics in disguise. On its *de facto* termination in Europe, the Second World War has yielded the Charter of the United Nations, and only the years to come will show how this opportunity has been used.

The present world balance of power rests on the political, economic, and strategic triangle of Washington, Moscow and London. As long as the three World Powers are resolved to maintain world order, with or without a United Nations' Charter, world peace is assured. Yet this should not convey that the international superstructure of a reformed League of Nations has not a value of its own. The United Nations' Organization can assist in strengthening the unity of the three Powers and make its specific contribution by rationalizing and stabilizing the existing and improvised means of collaboration between these Powers. Furthermore, machinery of this kind is, more likely than not, conducive to fostering the habit of solving the many issues which are bound to arise at the conference table, in an international commission or before a world bench, instead of by resort to the more traditional methods of power politics.

The extent to which such an integration of the international society will take place is primarily a matter of the spirit behind the Organization, or, in the words of the Charter, it will depend on the degree to which the members of the Organization will be able and willing to '*practise* tolerance and live together in peace with one another as good neighbours.'

The United Nations—or their governments for them—have decided on the pattern of world order which they consider feasible in the post-war period to come. It would, therefore, be of merely academic interest to enlarge on comparisons between the Charter and other possible alternatives which, though perhaps superior, suffer from the minor deficiency that they prove unacceptable to the great—and most of the small—of this earth. It would be equally futile to engage at this stage in speculations whether or not this Charter is likely to share the fate of its predecessors and to disappear in the smoke of a third world war. In accordance with Article 2 of the Charter, ' all members . . . shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.' As long as they do so, the problem does not arise. If any of them, barring the three World Powers, should venture to go back on its pledges, an emergency of this kind would provide a test which would only strengthen the United Nations' Organization, and the qualification of this statement merely recalls the basic assumption on which this whole world order is founded.

What may be attempted at this stage is to study the organs and institutions of the United Nations' Organization in the light of the objects and principles laid down in the Charter and to analyse how far these means are likely to contribute to the achievement of the ends for which they have been created. The purposes of the United Nations' Organization may be summarized under five headings: the maintenance of world order, the rule of law, economic and social co-operation, the protec-

tion of human rights and international trusteeship for colonial territories. How far are the means devised at San Francisco suited for the achievement of these objectives?

THE MAINTENANCE OF WORLD ORDER

The Charter underlines the determination of the United Nations ' to save succeeding generations from the scourge of war, which in our lifetime has brought untold sorrow to mankind.' The primary object of the Organization, therefore, is defined as the maintenance of international peace and security or, as it is put in another paragraph of Article 1, the maintenance of ' universal ' peace.

If all States were equally desirous of achieving this object, the easiest way of attaining it would consist in the indiscriminate admission of all applicants to membership. However, the veto resolution passed by the San Francisco Conference against Falangist Spain indicates that the Conference did not fall victim to any such fallacious argument, though the admission of Argentina to the Conference in spite of her present regime is open to a variety of interpretations. As in 1919, no test of suitability applies to the original members of the Organization. The fact that they have been sponsors of the Conference, or invited to it, has been considered sufficient evidence of their eligibility. Future applicants will have to show that they are ' peace-loving ' States, and, in the absence of any more objective criterion, such a State must be defined as a State which, in the judgment of seven members of the Security Council and of a two-thirds majority of the General Assembly, is considered to fulfil this requirement.

Right from the start, the new Organization has succeeded in achieving universality for all practical purposes. Thus, neither does it suffer from the obvious handicaps of non-universality, nor can this limitation be pleaded in the way in which it was so conveniently done in the

post-1919 period. As the Charter, differing in this respect from the Covenant, does not contain a withdrawal clause, for the first time the so far unorganized world society is now held together by a comprehensive institutional framework. Outsiders will be only those States which are considered by members to be unfit for membership or which have been expelled from the Organization as persistent violators of the Charter. Nevertheless, the position is ambiguous; for, in the minutes of the Technical Committee of the San Francisco Conference, the opinion was recorded that the right of withdrawal remained to each member, if exceptional circumstances compelled it to withdraw, or if the Organization should have clearly failed to accomplish its purposes.

The approach to the problem of world order chosen by the drafters of the Charter is on the traditional lines of the League of Nations pattern: promises to refrain from the threat or use of force in manners inconsistent with the purposes of the Organization, pacific settlement of international disputes, collective security, and regulation of armaments. Yet, within the limits imposed on any confederation, the Charter shows marked improvements as compared with the League Covenant.

Abstinence from the Use of Force. It is no longer possible for international lawyers, steeped in the 'diplomatic' treatment of their subject, to enjoy the quibble whether reprisals and other means of compulsory pressure short of war or resort to armed force are equivalent to resort to war. Nor can it be held any longer that each member State has to decide for itself what constitutes a threat to peace, a breach of the peace or an act of aggression. Now, under Article 39 of the Charter, the Security Council is entrusted with the important function of determining such issues.

Peaceful Settlement of Disputes. Article 2 of the Charter prescribes that 'all members shall settle their

international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.' Such conflicts become a matter of collective concern if they are likely to endanger the maintenance of international peace and security. In such a case, and only then, the Security Council may call upon the parties to settle their dispute in any of the customary ways: by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or by other peaceful means of their own choice (Article 33). If the parties fail to do so, it is their duty to refer the dispute to the Security Council. In the case of a legal dispute—the Charter does not define this category of international conflicts, which leaves the debate as it was at the time of the League Covenant—the Security Council is reminded of the advisability of referring it, as a general rule, to the International Court of Justice. In all cases which appear to endanger the maintenance of international peace, the Security Council is free to recommend such terms of settlement as it may consider appropriate (Article 37). If the Council should fail to take notice of a dispute of this kind, any member State, non-member State if prepared to submit *ad hoc* to the jurisdiction of the Organization, and the Secretary-General have the right to bring the case to the attention of the Council. As long as the Security Council is not seized with the matter, disputants have the alternative of approaching the General Assembly. Yet should action become necessary, any such issue must be referred automatically by the Assembly to the Council (Article 11), and the Assembly itself may call the attention of the Council to situations which are likely to endanger international peace and security.

Though action taken by the Security Council is termed a recommendation, this is rather an understatement. In each individual case it is a matter within the Council's discretion whether a danger to peace under Chapter VI of the Charter constitutes a threat to peace in the meaning

of the following Chapter and requires the adoption of measures of coercion. Thus the system contemplated by the Charter appears to be more akin to the type of collective intervention which was so successfully practised in Greece and Belgium in the twenties and thirties of the last century than to the comic operas of Geneva.

COLLECTIVE SECURITY. The guiding principle is well formulated in Article 2 of the Charter: 'All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.'

In order to ensure prompt and effective action by the United Nations the members have conferred on the Security Council the primary responsibility for the maintenance of peace and security; the Council acts on their behalf (Article 24); and the members of the Organization agree in advance to accept and carry out the decisions of the Council (Article 25).

The sanctions which may be applied range from the severance of diplomatic relations to full scale military, naval, and air operations against the recalcitrant member or non-member State. Provided that the permanent members of the Security Council are in agreement on the action to be taken against such a State, the Military Staff Committee, consisting of the Chiefs of Staff of the permanent members of the Council or their representatives, the national contingents of the United Nations' Air Force, and the assistance provided by the member States under agreements still to be concluded will present an accumulation of strength which only a madman would wish to challenge. Yet to call such an arrangement a system of international policing is only justified if metaphorical language is liberally used. Police presupposes government, and it remains to be seen whether the ties between

the permanent members of the Security Council will grow strong enough, and last over a sufficiently prolonged period, to make apposite analogies of this kind.

In this field, too, the United Nations' Organization compares favourably with the League of Nations. All the world powers are members of the new Organization, and no powerful non-member State casts its shadow over the deliberations of the Security Council. The Council is a truly permanent international institution, and if the main powers appoint representatives of sufficient stature, the Council may very well develop an *esprit de corps* which would greatly contribute to stronger cohesion within the Organization. Finally, at least on paper, two important issues have been thrashed out in advance: the eternal problem of self-defence, and the place of regional agreements within the universal system of collective security.

The 'inherent right of individual and collective self-defence' has been recognized in cases of armed attacks against any member State, yet it may only be exercised provisionally. Measures of this kind have to be reported immediately to the Security Council and do not prejudice the complete freedom and responsibility of the Council to take any action that it may think appropriate (Article 51).

Taking into account the alliances and pacts of mutual assistance already concluded between various members of the United Nations' Organization, all that could be done was to sanction these arrangements to the extent to which they are 'consistent with the purposes and principles of the United Nations,' and to charge member States who are parties to such agreements to keep the Security Council fully informed of activities undertaken or in contemplation under regional pacts or by regional agencies (Articles 52 and 54). If the Organization should prove successful, the significance of such pacts, whether truly regional or not, will diminish with the growth of confidence in the effectiveness of the new system of uni-

versal security, or these pacts may even be co-ordinated into localized systems supporting the general framework of collective action. Should, however, the United Nations' Organization go the way of its Geneva predecessor, the networks of these 'regional' agreements will provide an unfailing guide to the correct interpretation of the world alignments of to-morrow.

REGULATION OF ARMAMENTS. The truth that armaments are a symptom of insecurity, and that the regulation of armaments—and still more so disarmament—can only follow, but not precede the achievement of a modicum of security has by now become so obvious that any emphasis in the Charter on this aspect of maintaining international peace would have appeared farcical. The drafters of the Charter, therefore, have wisely contented themselves with dealing in a very matter-of-fact way with this topic. The question has been entrusted to the Security Council, whose responsibility it will be to formulate plans, with the assistance of the Military Staff Committee, and to submit them to the members of the Organization. The extent to which the permanent members of the Council will feel justified in applying such measures, and particularly measures of disarmament proper, to themselves, will provide another unfailing barometer for measuring international atmospheric pressure in the years to come.

THE RULE OF LAW

To maintain world order is in itself a function which would justify the existence of the United Nations' Organization. Yet had the Fascist challenge to world civilization not proved to be such a dismal failure, there would have been some kind of order even in a world ruled by Fascist gangsters. It was the awareness of this basic difference between a civilized and barbaric approach to the problem of world order which made the Dominions and smaller States represented at the San Francisco Conference restive with regard to anything that

looked like placing, in any way, the permanent members of the Security Council above the law. In so far as the enforcement of the collective will goes, their point has not been met. Any of the five permanent members is entitled to prevent executive action against itself. Yet in response to the representations of the smaller States, and with a helping hand extended to them by the United Kingdom Delegation, the attempts made to extend this exception of the rule of law have been frustrated. Thus, by insisting on the rule that, in decisions under Chapter VI and under paragraph 3 of Article 52, 'a party to a dispute shall abstain from voting' (Article 27, paragraph 3), in an important field, the principle has been vindicated that nobody should be judge in his own cause.

This anxiety of the international 'small man' gives a clue to the emphasis in the Charter on the principle of 'sovereign equality.' Departures from this rule—and there are many and very necessary exceptions to it in the Charter—derive their authority from the free consent of those whose rights have to be curtailed in the interest of the effective maintenance of world order and of the achievement of the other objectives of the Organization. With these limitations, the Charter accepts the principles of sovereignty and State equality, the two corner-stones of classic international law: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present Charter.' There is only one interest which the signatories have acknowledged to be overriding: the maintenance of world order. Therefore, recommendations and decisions of the Security Council made in order to maintain or restore international peace and security under Chapter VII of the Charter, are exempted from the operation of the sovereignty clause (Article 2, paragraph 7). It is regrettable that in one respect the drafting

of this Clause is retrograde as compared with the League Covenant and the Dumbarton Oaks Scheme. In paragraph 8 of Article 15 of the Covenant, the competence of the League Council is excluded in any 'matter which *by international law* is *solely* within the domestic jurisdiction' of a member State. In the Charter the reference to the measuring rod has disappeared, and the replacement of the term 'solely' by 'essentially' may be interpreted as a further concession to the conception of State sovereignty.

It is to be welcomed that the Preamble of the Charter refers expressly to justice and respect for the obligations arising from treaties and other sources of international law; for contemporary doctrine has far too long ignored the debt owed by positive international law to notions of natural justice and equity. It is equally encouraging to find in the Charter an express recognition of the need for a dynamic approach to international law. The General Assembly will be responsible for initiating studies and for making recommendations in order to encourage the 'progressive development of international law and its codification' (Article 13). Yet to judge by the experiences of the post-1919 period, it is more likely that the weightiest contribution to the further development of international law will not come from this quarter and its efforts at laborious codification, but from the International Court of Justice. In the twenty years of its work, the Permanent Court of International Justice has done far more valuable work in this field by way of judicial law-making than either the conferences held under the auspices of the League of Nations for the progressive codification of international law or whole generations of textbook writers. It is, therefore, a sign of wisdom and a well-deserved tribute to the Court that this most successful experiment in international judicial institutions has been salvaged *in toto* from the ruins of the League and, with a slight modification in name and with minor modifications

in its Statute, has been incorporated into the United Nations' Organization.

It would be ungenerous not to acknowledge the notable improvements in the technique of international law and organization contrived by the drafters of the Charter. The narrow definition of the principle of self-defence and the assertion within limits of the rule of the incompatibility of being judge and party in the same cause have already been mentioned. More remarkable is the extent to which the Organization has dispensed with the obnoxious unanimity principle in favour of simple and qualified majorities (Articles 18, 27, 67, 89 and 108). The Charter takes over Article 18 of the League Covenant, requiring the registration with the Secretariat of treaties concluded by any member of the Organization. It is to be hoped that the Secretary-General of the United Nations Organization will not be haunted by the evil practice of his predecessors in the League of Nations, who degraded themselves to mere filing and publication clerks. It is his right and duty to convince himself that no conflict exists between the obligations of the signatories under the Charter and their treaty obligations. Article 103 of the Charter prescribes that the obligations of member States under the Charter take precedence over any other international obligations, and thus endows the Charter with a character akin to that of a written constitution in systems of municipal and federal law. Should there be any doubt on the compatibility of any such other obligation with the Charter, the request on the part of any member State for the registration of such an engagement provides the Secretary-General with a legitimate opportunity of investigating the matter, and should he feel any doubt, to draw the attention of the General Assembly or of the Security Council to the issue. It is then for them to decide whether to ask the International Court for an advisory opinion on the alleged incompatibility. If a member State should fail to register a treaty with the

Secretariat, the Charter provides that such a treaty may not be invoked before any organ of the United Nations, thus settling authoritatively a question which had remained controversial under the League Covenant.

In so far as the status of the United Nations' Organization itself is concerned, Article 104 grants to the Organization in the territories of the member States 'such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose.' Thus, for some purposes, the Organization may claim the status of a subject of international law, while, for others, it may be sufficient if it receives the treatment to which public or private corporations are entitled. Similarly elastic is the clause relating to the diplomatic privileges and immunities of the Organization, of representatives of the member States, and of officials of the Organization, though the General Assembly is authorized to make more detailed recommendations or to propose the conclusion of more specific conventions to the member States.

In view of the Geneva experience, particularly during the Italo-Abyssinian conflict and during the appeasement period, it was not superfluous to emphasize expressly the international obligations of the Organizations' civil service. In the performance of their duties, the Secretary-General and his staff are not to seek nor to receive instructions from any government or any other authority external to the organization, and all members are to respect the 'exclusively international character of the responsibilities' of these officials.

While in the League of Nations the right to ask the Permanent Court of International Justice for advisory opinions had been rigidly reserved to the Assembly and Council, the General Assembly of the new Organization has the right to authorize other organs of the United Nations and specialized agencies to request advisory

opinions of the Court on legal questions arising within the scope of their activities.

Finally, it may be mentioned that the Charter provides for the possibility of amendments and for automatically placing the proposal to call a special conference on the agenda of the tenth annual session of the General Assembly, unless such a Conference for the revision of the Charter has taken place before this date.

INTERNATIONAL ECONOMIC AND SOCIAL COLLABORATION

With one eye on the Russian Revolution of 1917 and the other on the ' good boys ' of the Second International, the Peace Conference of 1919 solemnly acknowledged that universal peace had to be based on social justice, established the International Labour Organization and inserted a series of laudable standards for economic and social international collaboration into Article 23 of the League Covenant. Bearing this precedent in mind, it may be wise to suspend judgment on the magnificent frameworks created for international economic and financial collaboration, the protection of human rights, and the development of the trusteeship conception; for the way to hell is paved with good resolutions. Until collective action has filled in the all-important details, it appears premature to concentrate unduly on these officially sponsored blueprints.

The activities of the United Nations' Organization in the fields of economic and social international collaboration will be the responsibility of the General Assembly and of the Economic and Social Council, consisting of eighteen members elected by the Assembly. The United Nations appear foremost to have pledged themselves to a super-Beveridge plan: ' Higher standards of living, full employment, and conditions of economic and social progress and development ' (Article 55). It will be the special function of the Economic and Social Council to co-ordinate the activities of the several international

agencies already existing in these fields, to make recommendations to the General Assembly, to the members of the Organization and to the other institutions concerned, and to prepare draft conventions for the consideration of the General Assembly. The Economic and Social Council may also make or initiate studies and reports on matters within its competence, as the Economic Division of the League and the International Labour Office had done during the inter-war period. Yet it cannot be said that the very competent reports made by these institutions had any considerable influence on the economic and social policies of those States which would have been most in need of such expert guidance. Furthermore, the situation has changed since the time of Castlereagh who, in the letter quoted at the beginning of this Chapter, advised the powers of Europe to 'stand together in support of the established principles of social order.' To-day there is no more unity of thought on what the desirable principles of social order are. There is a clash between what some call the service principle and others term serfdom, on the one hand, and free enterprise, described by others as a system of profit-making and monopoly capitalism. If members of an international organization differ to such an extent on basic problems of economic and social order, but value their political collaboration in the interest of an overriding purpose, the maintenance of world order, they may conclude non-aggression pacts in these fields and agree on compromises in geographic regions. But it would be over-sanguine to expect more than a modicum of positive concord in the realm of concrete and practical action.

THE PROTECTION OF HUMAN RIGHTS

The heavy odds against the individual in modern mass society and his experience of ignominious subjugation in totalitarian States sufficiently explain why the 'fundamental rights of man' have become the battle-cry of

well-meaning reformers and a harmless diversionary pastime of less progressive contemporaries. Yet the test of this pattern is its applicability to the many practical instances in which, as is common knowledge, the fundamental rights are openly and contemptuously flouted. There is no difficulty in reaffirming in the Preamble of the Charter ' faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women.' It is also not beyond the power of the General Assembly to initiate studies and to make recommendations for the promotion of international co-operation in these spheres, and it is something to see that all member States have pledged themselves to take joint and separate action in collaboration with the Organization for the achievement of these purposes. In the absence of another appropriate organ, the Economic and Social Council has been entrusted with the additional task of making recommendations for the purpose of ' promoting respect for, and observance of, human rights and fundamental freedoms for all.' While it may well be expected that general resolutions on this topic will be adopted in great numbers, the investigation of specific charges against individual member States is likely to be resented by them as an unwarranted intervention on the part of the Organization ' in matters which are essentially within the domestic jurisdiction of any State.'

THE PRINCIPLE OF TRUSTEESHIP

The signatories of the Charter have been equally generous in their protestation of altruistic intentions towards their colonial populations. Yet the trusteeship system contemplated by the Charter and ultimately intended to lead to ' self-government or independence ' according to the special circumstances of each territory, does not automatically apply to all the colonial possessions of the member States. Territories in the following categories *may* be placed thereunder by means of trustee-

ship agreements between the Organization and the member States in charge of these territories: the present League mandates, territories which may be detached from enemy States as a result of the Second World War, and territories voluntarily placed under the system by the colonial powers.

The competences of the General Assembly and of the Trusteeship Council, working under its authority, are wider than those of the League Council and of the Permanent Mandates Commission and include the possibility of periodic visits to the trust territories. In areas which are considered to be strategic areas, the functions of the United Nations will be exercised by the Security Council.

Only experience can show how anxious member States will be to be relieved of the ' white man's burden,' and how liberally the conception of strategic areas will be interpreted.

Anyone who has a craving for originality will be disappointed to learn that not even the name of the new Organization has any claim to novelty. About two hundred years ago, a loose confederation of North American Indian tribes called itself by the proud name of the United Nations. In dusty records, we may read that, on one memorable occasion in 1758, they exchanged with British colonial governors as an earnest strings of wampum and belts, and Governor Denny explained to them the purpose of a treaty to be concluded between these tribes and the colonies of Pennsylvania and New Jersey as their mutual desire ' that everything may be settled, so as no doubt may remain to create any uneasiness in our hearts hereafter.'

To-day, we are far remote from the facile illusion that a treaty, covenant or charter settles anything. Too many ' permanent ' and ' eternal ' engagements have been cynically evaded or blatantly violated, and only ignorance can excuse consciousness of the numerous confederations which have preceded this world league and foundered on

the rocks of national sovereignty and power politics. Both are as potent as ever, in our time. If there is any hope, it may be derived from the stability of the three world units on which the United Nations' Organization is based and from their sense of responsibility. As long as the unity between these world powers lasts, the maintenance of world order, the rule of law between nations, and the other objectives of the new Organization are more than the daydreams of escapists from the reality of world power politics.

SUGGESTED READINGS

H.M. Stationery Office. *Report on the Future of the Permanent Court of International Justice* (Cmd. 6531). 1944.
——*United Nations Monetary and Financial Conference at Bretton Woods* (Cmd. 6546). 1944.
——*International Air Transport* (Cmd. 6561). 1944.
——*Dumbarton Oaks Proposals* (Cmd. 6560). 1944.
——*British Commentary on Dumbarton Oaks* (Cmd. 6571). 1944.
——*International Civil Aviation Conference* (Cmd. 6614). 1945.
——*Report on the Crimea Conference* (Cmd. 6598). 1945.
——*Food and Agriculture Organization of the United Nations* (Cmd. 6590). 1945.
——*British Commentary on the Charter of the United Nations* (Cmd. 6666). 1945.
——*Agreement on the Prosecution of the Major War Criminals of the European Axis* (Cmd. 6668). 1945.
——*Commentary on the Report of the Preparatory Commission of the United Nations* (Cmd. 6734). 1946.
Holborn, L. W. *War and Peace Aims of the United Nations*. 1943.
Marston, S. *Processes of Peace-Making* ('*The London Quarterly of World Affairs*,' *July*, 1945).
Thomson, D., and others. *Patterns of Peace-Making*. 1945.
United Nations Information Organization. *Documents of the United Nations Conference on International Organization, San Francisco*, 1945. 1946.
Wehberg, H. *Einfuehrung in die Satzung der Vereinigten Nationen* (*Die Friedens-Warte*, 1945).

CHAPTER 7

THE PROSPECTS FOR INTERNATIONAL LAW

'The implications of atomic explosion will spur men of judgment as they have never before been pressed to seek a method whereby the peoples of the earth can live in peace and justice.'

(General G. C. Marshall, 1945.)

INTERNATIONAL law has survived astonishingly well the host of ingenious horoscopes cast regarding its future by magi in many lands. Some are prophets of gloom and prognosticate its impending breakdown. Others purport to see a constellation of circumstances which promises an unexpectedly bright future for the weakling in the laws family. Yet, when, at times, such astrologers appear in groups, it is not sufficient to explain their emergence in terms of individual psychology; for, like the phenomena which they analyse, they themselves are very much the product of their environment. Allowing for exceptional types, they fall into two categories which are fairly closely related to the cycles of pre- and post-war periods. For the sake of briefness, and without disrespect, they may be named the 'pre-war' and 'post-war' schools.

Whenever an existing balance of power system tends to decline, the powers bent on its overthrow direct some of their preliminary and diversionist attacks against its legal superstructure. Their propagandists—and, not infrequently, *bona fide* students of international law—tend to explain and excuse breaches of treaties and of cumbersome promises with reflections on the weakness of international law in general and with more or less ingenious arguments which provide a quasi-sociological ideology for such acts of international lawlessness. This type of situation provides the normal background for the usually merely destructive reasoning of the 'pre-war' school of thought. During the subsequent upheaval of a

major war, belligerents charge each other—and neutrals charge both the warring camps—with alleged and real infractions of the rules of warfare and neutrality. Unless, as it happened in the case of the totalitarian aggressors, one side itself confesses its open disdain of all standards of civilization and of the very notion of international law, belligerents are usually very forthcoming in making liberal promises regarding the reign of law that they intend to establish once victory has been achieved. This situation provides a starting-off point for the 'post-war' school. Taking such official manifestos too literally—or too seriously—the enthusiasts of this school have a tendency to sin as much on the side of unrestrained day-dreaming as the 'pre-war' school trades illicitly in the fabrication of unmitigated gloom.

If there were no alternative but the choice between these two schools, the 'post-war' idealists might be considered the lesser evil. As they do not challenge the reality of international law, they do less harm to the object of their inquiry than the 'pre-war' fraternity whose overstatements are not limited to the vulnerable parts of international law—the law of power which merely serves as an ideological cover for the requirements of international political strategy—but are directed against the fabric of the law of nations as a whole. Yet they habitually make it their business to acclaim in optimistic anticipation, as an alternative to power politics, legal superstructures such as the League of Nations which, seen in retrospect, are little more than rather thin disguises of the rule of force. They might have fared better if they had adopted an attitude of waiting, seeing, and judging by results rather than by the good intentions displayed in pious resolutions and patient charters.

In spite of their diametrically differing conclusions, both schools have in common a feature which explains one of their deficiencies in method; neither pay sufficient

attention to the social reality underlying international law, that is to say, international society, and they fail to take into proper account the peculiarities of the driving forces in it and its specific structure. Thus the 'pre-war' school under-estimates the possibilities which even a system of power politics leaves to international law, and their opposite numbers ignore the inherent limitations which international relations arranged on such a footing impose on international law. Any prognosis of the course which international law is likely to take in the years to come must equally try to avoid the 'realism' of the one, and the 'idealism' of the other, school.

The pattern on which international law is most likely to develop in the post-war years to come is conditioned by the world order—or rather quasi-world order—represented by the United Nations. As, in kind, the United Nations does not differ from the League of Nations, it appears unnecessary formally to distinguish this type of international law from that of the League period. Yet in order to bring out its specific features, it may be helpful first to remind the reader of the pattern of pre-1914 international law and, finally, to consider whether there are any other patterns of order and law which might assist in the further integration of the international society.

THE PRE-1914 PATTERN OF INTERNATIONAL LAW

As has been shown in greater detail in a previous Chapter, pre-1914 international law is distinguished by two salient features:

THE PRINCIPLE OF NATIONAL SOVEREIGNTY. To the extent to which the absolute freedom of a State is not limited by rules of international customary or treaty law, a State remains free to do what it likes, and all matters with regard to which its freedom of action is not restricted remain within its exclusive domestic jurisdiction.

THE PRINCIPLE OF CONSENT. Unless it can be show that a principle of international law is universally c generally recognized as a rule of international customar law, it is not binding on a State that has not given i express or tacit consent to such a principle.

An individualistic legal system of this kind may b adequate in an exceptionally static social environment o between groups which only rarely come into contact wit each other. While the second assumption applied only i the beginnings of modern international society, the firs would be a singularly misleading description of th expansion of the original European State system int present world society. In such dynamic surroundings, a system of international law, in which changes were subjec to a veto reminiscent of the ancient Polish diet, could b expected to work only on the condition of superhumar restraint being shown continuously by all concerned Was a State that had made what it considered to be a reasonable request to leave it at that if the other party refused to comply with its demand? Or was it to be expected that a State should make concessions merely in order to appease a persistent and embarrassing membe of the international society? In fact, provided that States had a certain modicum of strength, they were spared having to ponder over such difficult issues of international morality. If they wanted anything badly enough and felt strong enough to take it, they did so, and if a State felt confident that it might successfully resist the demands of an aggressor, it would stand up for its rights. Thus, the question whether any existing equilibrium was to be disturbed or not, ultimately depended on the question whether any particular State was prepared to throw its whole existence into the scales and to gain whatever advantage it desired or to refuse what it was not prepared to give up at the risk of its survival. Admittedly, naturalist writers on international law attempted to distinguish between just and unjust

wars. Yet there hardly ever was a war which, according to their rather elastic criteria, could not somehow be justified. Even the pretence of such a distinction was relinquished by modern positivist writers, and this meant that States had no longer to find even a quasi-legal excuse for doing what they had in any case decided to do. Thus, pre-1914 international law was either subservient to international politics—a typical example of the law of power—or limited to fields which, from the point of view of the rule of force, were irrelevant. Here there was a certain scope for the assertion of the two other types of law: the law of reciprocity and, in embryo, the law of co-ordination. If, over prolonged periods, this international anarchy was not quite as obvious as one might have expected, it was due to the international quasi-order which the Concert of Europe represented. As long as the Greater Powers were in general agreement, there was the semblance of order, but the alternative to unanimity was chaos.

INTERNATIONAL LAW WITHIN THE FRAMEWORK OF THE UNITED NATIONS

The crucial issue of comprehensive international institutions such as the League of Nations or the United Nations is not necessarily whether they form an alternative to power politics. It would be no small thing if their existence would cause to be reversed the traditional relation between the rule of force and international law, that is to say, to limit power politics to forms of pressure short of the application of physical force. With reservations, which created dangerous loopholes, the drafters of the League Covenant and of the Kellogg Pact attempted to achieve this result and they failed. Now again the signatories of the new collective system voice their determination 'to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind'; they define as the primary

purpose of the United Nations the maintenance of international peace and security; and they enunciate the principle that 'all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.'

Experience has shown that most States at most times keep their international obligations. Yet the negative implication of this statement makes it necessary to scrutinize the other side of the picture. As long as none of the permanent members of the Security Council become guilty of infractions of the Charter of the United Nations, the coercive machinery of the Organization appears perfectly satisfactory. Yet in so far as these five Powers are concerned, they are able by their veto to exempt themselves from the sanctions of the law that they may contravene. Thus, in fact, they are as much above the law as any sovereign State in the pre-1914 period. If evidence were required to prove the reality of this contention, it is furnished by the Powers which, at present, have the monopolies of the atomic bomb and—to use the words of the Atomic Charter—of other methods of warfare 'which may constitute as great a threat to civilization as the military use of atomic energy.' While it may be hoped that the present state of affairs is merely of a temporary character until the United Nations Commission has made its recommendations, it remains to be seen whether the powers will take the recommendations of this Commission more seriously than their predecessors took those of the various disarmament conferences during the interval between the First and Second World Wars. As long as the monopoly in weapons of such destructive force exists in fact, it amounts to the emergence of a new type of super-Leviathan who is incomparably more powerful than other States which formerly called themselves sovereign States. From a realistic point of view,

the attribute of sovereignty can be applied to-day only to States which either have at their disposal weapons of cosmic warfare or are able to minimize the effects of the application of such weapons against themselves. The main difference which, therefore, exists between the post-1945 and the pre-1914 systems of international organization is the amazing reduction in the number of *de facto* sovereign States. Believers in the *laissez-faire* principle in international affairs may deduce from this development that the dialectics of world society will ultimately bring about the completion of this trend towards world centralization, provided that what is left will be considered worth organizing into a world State.

In so far as a small hierarchy of world powers is concerned, their position is more analogous to the position of sovereign States under pre-1914 international law than to that of smaller States under the Charter of the United Nations. The position is not very different if we inquire whether an alternative has been evolved to the principle of consent, the other corner-stone of classic international law. Again, if allowance is made for the exceptional position of the permanent members of the Security Council, the United Nations' Charter makes provision both for the maintenance of collective security and for peaceful change, the two concomitants of international order. The competences granted to the Security Council regarding the settlement of disputes which are likely to endanger international peace and security are more than ample to deal with conflicts between the lesser States. Even a member of the Security Council must abstain from voting if it should itself be a party to a dispute. Yet whether this means what it purports to mean, only the future can tell. A member of the Security Council may take a detached attitude towards a dispute, one of the parties to which happens to belong to its 'security zone,' or it may regard any adverse opinion as not only directed against that State, but also as impairing its own

prestige. Should one of the permanent members of th Council be a party to a dispute and be forced to abstai from voting, this self-denying ordinance does not exten to the all-important Chapter Seven of the Charter 'Action with respect to Threats to Peace, Breaches of th Peace, and Acts of Aggression.' Thus it looks as if in thi field, too, things have not changed so very much in s far as the great ones of this earth are concerned.

There is still no proper international order on whic international law may securely rest. The Concert o Europe, balance of power systems, or the principle o the unanimity of world powers are at best substitutes, with two world wars on their debit side. If the relations between the members of the Security Council were such as to make war between them unthinkable, the formal survival of veto powers might not be very significant. It cannot be denied that between the United States of America and the U.S.S.R.—the two foremost power units in our atomic age—there are no actual or potential conflicts of interest on which a peaceful compromise should not be possible. Equally, more than ever to-day, the interests of the British Empire and Commonwealth are identical with those of world order and peace. It may also be assumed that the other members of the Security Council—world powers by courtesy rather than otherwise—will not willingly initiate another major conflagration themselves. Yet it must not be overlooked that, as compared with the nineteenth century, our age suffers from a new cleavage: the split of the world into two, if not three, ideological camps. The United States of America has become identified with all the positive and negative feelings which are associated with private enterprise, monopoly capitalism, and economic conservatism. The U.S.S.R. appears to stand for State socialism and social planning, even at the price of serious restrictions of personal freedom. Great Britain and the Continent of Europe are in the midst of working out a synthesis which

will allow them to combine the positive features of both ways of life, that is to say, the dignity of the individual with social security. This means that the conception of national sovereignty now protects values which, whether actual or fictitious, mean something to millions all over the world. It may be hoped that each of the world powers looks in a spirit of toleration at the social pattern practised by the others and wishes rather to learn from them than to spread its own brand of temporary happiness. Yet it would be unsafe to assume that, once the memory of the common struggle against the enemies of world civilization recedes into the background, the world powers will not again take a more eristic view of these ideological differences between them. Thus, any prognosis of the prospects of international law has to be made with the reservation that the foundations of international law remain as dubious as they ever were, unless comfort is derived from the decreasing number of really sovereign States or from the increase in the destructive powers wielded by the super-Leviathans.

The Charter of the United Nations envisages, and provides scope for, a variety of techniques which may contribute to the further development of international law:

(1) Codification. The General Assembly is expressly charged with the duty of initiating studies and of making recommendations for the progressive development of international law and its codification. To judge by the experience of the attempted codification under the auspices of the League of Nations of subjects such as the law of territorial waters, responsibility of States, or neutrality, or of the results of the Hague Codification Conference of 1930, not too much should be expected from this direct approach to the problem. The results of fifty years' efforts at the codification of international law might have damped the enthusiasm of those who tended to over-estimate the significance of codifications of municipal

law and the applicability of this technique to international law. As it happened during the Hague Conferences of 1899 and 1907, frequently the price of formal agreement on a controversial issue was an amount of vagueness that perpetuated the possibilities of conflicting interpretations. Or, as may be seen from the official replies to the various League questionnaires, *ex abundantiae cautela*, Foreign Offices added so many qualifications to what had been considered perfectly straightforward rules of international customary law that the attempt at codification merely compromised formerly unchallenged principles of international customary law. Yet, as so often happens in the case of ill-judged progressive moves, their by-products are much more valuabove than the efforts themselves, and, in this case, these were the private and official studies which had been prepared for the purposes of documentation.

(2) International Case Law. In contentious cases, the new International Court of Justice has the same scope as the Permanent Court of International Justice had within the framework of the League of Nations. As under the Statute of the Permanent Court of International Justice, States remain their own masters whether or not they wish to submit their legal disputes to the World Court. Yet in future the Court will have more opportunities to give guidance by means of advisory opinions than the Permanent Court of International Justice. While the League Court was authorized to render advisory opinions at the request of the Assembly or Council of the League of Nations alone, the General Assembly of the United Nations may authorize other organs of the United Nations and specialized agencies to request advisory opinions of the Court on legal questions arising within the scope of their activities. If it is remembered that, in the past, not even the International Labour Organization had direct access to the Permanent Court of International Justice,

the progress made is considerable, provided that the General Assembly confers the privilege on all suitable institutions. Such a policy would enable the International Court of Justice to make a still greater contribution than was made by the Permanent Court of International Justice to the law of international institutions: one of the most constructive and most neglected branches of international law. Yet to judge by the work of the Permanent Court of International Justice, the most significant aspect of the new Court will not be the achievement of actual settlements—the mere fact that States classify a particular dispute as legal is an indication of its relative insignificance—but the body of case law that may be expected from the practice of the Court. The Statute of the International Court of Justice reaffirms the rule of the Statute of the Permanent Court of International Justice that the decisions of the Court have no binding force except between the parties and in respect of that particular case, and as in the case of an advisory opinion there are no parties, they therefore have no legally binding force whatsoever. Yet the persuasive authority of a well-reasoned decision or advisory opinion given by a bench composed of the world's leading international lawyers is greater than that of the most illuminating views held on any subject in this field by individual writers. Though no miracles should be expected, a slow but sure enrichment of international law by the practice of the International Court may be taken for granted as long as States do their part, that is to say, submit a sufficient number of disputes to the Court, and thus keep the mills of justice grinding.

(3) Institutional Integration. Corresponding to the widening scope and growing intensity of international relations, the need for international collaboration in matters as diverse as economic, financial, social, cultural and educational relations is likely to call for the expansion

of existing international institutions and the creation of new agencies. Yet it should not be overlooked that, in these spheres, underlying differences in outlook and social organization may in some cases make the creation of a universal international institution inadvisable and may call for closer collaboration between States of a similar type or on a regional basis. Nevertheless, wartime inter-Allied institutions have proved to what extent even States organized as differently as the United States and the U.S.S.R. can work together in international institutions, provided that there is an overriding object, and they are determined to make the experiment a success.

Any further development along the road of functional international integration may benefit from two lessons of the past. Firstly, international institutions are likely to achieve the maximum of efficiency in inverse proportion to their dependence on Foreign Offices. A comparison between the achievements of the Universal Postal Union and the International Telegraphic Union will explain the reason. Until Foreign Offices have disabused their minds of thinking in terms of power politics first and foremost—which, in a system of power politics, they can hardly be expected to do—it is hard for them to consider any issue in terms of the intrinsic merits of this or that solution, and functional integration depends upon an attitude of mind which springs from intimate knowledge and professional enthusiasm. Secondly, there is no surer way of killing initiative than by reducing such institutions to the sterility of merely deliberative and resolution-producing bodies. Even a cursory perusal of the International Labour Code published by the International Labour Office shows how much useful work was done in vain within the framework of this Organization, and there is no reason to see why conventions adopted by the International Labour Conference with the required qualified majority should not become automatically

binding on the member States. Any further progress in the institutional sphere is not only likely to contribute to the further stabilization of the international society, but also to the growth of entirely new branches of international law. In fields such as international economic, financial, and labour law such beginnings have already been made, though they have hardly yet received sufficient attention from the academic international lawyer. Apart from the fact that these subjects are of practical importance, they are also valuable from the point of view of the teacher; for they help to weight the balance within the system of international law still further against the law of power and in favour of the law of reciprocity. While the former is but an embarrassment and a handmaid of the rule of force, the latter derives its validity from the reciprocal interests of the members of the international society in its observance and restrains the potential transgressor by the threat of his exclusion from the nexus of benefits accruing to him only on a footing of mutuality.

Functional integration of the world society need not be conceived exclusively on universal lines. Links between some States may allow for more intensified co-ordination of efforts than, at the present stage, may be called for on a worldwide scale. This may either be due to affinities as they exist between the members of the British Commonwealth, or to geographic considerations as they apply among States situated in America or in other regions of the world. As long as such closer unions are not planned with any antagonistic objects in mind, but for a common purpose, they may fulfil a special function which follows from their experimental and pioneering character. If they are a success they invite repetition on a larger scale. Thus to-day the post-1919 experiment in the organization of European air transport, or the co-operation of the American States in the Pan-American Union, offer material that is taken from actual life, and is for this

reason so much superior to the most perfect blueprint in the realm of international planning.

Apart from the danger that regional or any other type of sectional international institutions may become the vehicles of centrifugal tendencies, the fact that the benefits of such efforts may be primarily limited to one region does not necessarily speak against the desirability of universal international institutions. The reconstruction of devastated areas, the establishment of an international Administration for the Danube on the lines of the Tennessee Valley Authority, the work of UNRRA in Europe and the Far East are all tasks the principal benefits of which will not accrue to the United States of America or to the British Empire and Commonwealth. Yet without their full support, no such scheme could hope to be a success. It is the privilege of a world power to be associated with anything of significance that happens anywhere in the world, and this explains why, even without apparent reciprocity, support for such schemes may be expected from such powers. The fact that world powers themselves take such a line—a recent instance was provided by the Conference regarding the Re-establishment of the International Regime in Tangier—in itself suggests that it would be wise to tread cautiously in so far as any apparently exclusive development of international law and institutions is concerned.

(4) FUNDAMENTAL RIGHTS AND FREEDOMS. It is a healthy reaction against the positivism of a bygone period that attention is increasingly paid both to the moral and spiritual bases of international law and to the individual as the basic unit on which, ultimately, both national communities as well as the international society rest. When, during the age of imperialist expansion, international law ceased to be the public law of the European Christian States, it jettisoned its Christian basis in favour of rather vague standards recognized by all civilized

States, and a still more dangerous phase of international law commenced when any sovereign State as such was considered eligible to be a subject of international law. Had it not been for this lack of discrimination, the world might have noticed earlier than it did the anomaly of treating nations ruled by fascist gangsters as the equals of civilized communities. It is thus perfectly understandable that the founders of the United Nations resolved to make the Organization responsible for promoting 'respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.' It is not so easy, however, to see how the compliance of the members with these principles is to be secured. In the Charter, all members have pledged themselves to take 'joint and separate action' in co-operation with the Organization for the achievement of this purpose. Ultimate responsibility for the discharge of these functions will rest with the General Assembly and, under its authority, with the Economic and Social Council. It can be imagined that the Economic and Social Council will draw up recommendations and draft conventions on the lines of constitutional and international precedents of bills and declarations of human rights. Yet what would happen if the General Assembly or the Security Council were asked to address themselves to an alleged breach of such standards as laid down in such resolutions or conventions? Is the highest or lowest standard of achievement amongst the members of the United Nations to be taken as the measuring rod? Are only such freedoms and rights as are recognized by all or the majority of the United Nations considered fundamental? Is the United Nations to concern itself with the question whether a member State secures such rights to its citizens both in law and in fact? Would any such investigation be outside the competence of the Organization, as it would constitute an interference with 'matters which are essentially within the domestic jurisdiction of any

State'? Matters become still more complicated if the question is considered how, if at all, members can be compelled to remedy deficiencies in their government and administration amounting to a violation of fundamental rights and liberties.

It might be replied that such principles are merely intended to give expression to the conscience of the world and that they share their weakness—and greatness—with other catalogues of moral precepts. Yet in a world which has applied international morality primarily as a useful means of propaganda, there is a serious danger that such vague and undefined principles may be used as cloaks of intervention and as excuses for impairing the universal character of the Organization. This criticism is not meant to suggest a wholesale abandonment of any attempt at realizing this object of the United Nations. It is merely due to anxiety lest here—as in the field of international law in general—the use of deductive methods might lead to results not necessarily contemplated by the sponsors of these standards. It is, therefore, suggested that, in the initial stages, these principles should be applied inductively and experimentally, for instance, in the trust territories to be administered on behalf of the United Nations. The promotion of these rights and freedoms has been expressly proclaimed as one of the chief objectives of the trusteeship system. As the Trusteeship Council is composed of all the permanent members of the Security Council and will probably contain a fair cross-section of the other members of the United Nations, this body may provide a useful testing ground for the more concrete formulation of principles which appear acceptable at least to a majority of the members of the Council with respect to a territory under the sovereignty of the United Nations. Similarly, on the precedent of the Philadelphia Charter adopted by the International Labour Organization, specialized international agencies might be encouraged to elaborate similar professional

charters. Or, in connection with the settlement of concrete political disputes, the Security Council or other organs, excercising quasi-legislative functions under agreements between the parties concerned, might make it a practice to pay attention to the adequate protection of fundamental human rights and liberties. In this respect, the Minorities Treaties of 1919 and the German-Polish Convention of 1922 regarding Upper Silesia may be usefully remembered. While the abstract approach chosen in the Charter of the United Nations is a too vivid reminder of eighteenth century mentalities and ideologies, more concrete and realistic attempts to deal with individual issues within the competence of the United Nations in the spirit of the Charter might prepare the ground for more ambitious plans at a later stage.

Subject to the reservation that international law still rests on the basis of a mere quasi-order, the prospects for international law within the framework of the United Nations are not unpromising.

Resort to armed force is outlawed. Compared with the Covenant of the League of Nations or the Kellogg Pact the improvement is obvious. It is now a matter of complete indifference—if it was not so already in the past—whether a State merely resorts to the use of armed force or whether it means to resort to war in the full meaning of the term. Any threat or use of force, including reprisals and other coercive measures, which involve the use of force, are declared to be illegal. The 'inherent right of individual or collective self-defence' has been subjected to the scrutiny of the Security Council and to its overriding jurisdiction. Between members of the United Nations neutrality has been replaced by collective responsibility: 'All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.' If members

do not prefer to settle their differences by means of their own choice, the United Nations provides ample machinery for the adjustment of legal and political disputes. The International Court of Justice will do well if it only maintains the traditions and the prestige acquired by the Permanent Court of International Justice. Should the miracle happen, and, over a prolonged period, the members of the Security Council should behave as guardians of world peace rather than as advocates in disguise, then they would not only greatly contribute to the cause of order in the international society, but they might elaborate in their practice a set of quasi-legislative principles, a body of international equity rules, which might be applicable in subsequent cases of a similar kind. While any such picture may be dismissed as a speculation coming dangerously near the statements of the 'post-war' school, the case law to be expected from the International Court of Justice and the institutional integration of the international society on universal, regional and functional lines will probably form the most constructive aspects of the international law to come.

THE ASSIMILATION OF INTERNATIONAL LAW TO MUNICIPAL LAW

To hold that power politics and war are the natural consequences of the international society being organized on the basis of sovereign States and empires which, as they are sovereign, insist on their freedom of armaments, tends to become a commonplace. Yet it appears to have required the atomic bomb to induce Statesmen to make declarations such as that 'every succeeding discovery makes greater nonsense of old-time conceptions of sovereignty.' The problem is whether there is any practical means of removing the question-mark behind the United Nations pattern of international law. At this point a parallel between international and municipal

law may be helpful. In spite of the identification of law and the State by Professor Kelsen, it remains sociologically true that both are separate phenomena. Ultimately, the State is a power organization, and law rests securely on this basis, as the State insists on the monopoly of the use of legitimate force, puts its overwhelming strength behind the law, and if necessary forestalls revolution by additional machinery for the adaptation of the law to changing requirements. It does not appear that international order can be bought at a lesser price.

Even if only the monopoly of armed force—or of weapons of cosmic warfare alone—were to be transferred from States to the world society as a whole, this would mean the establishment of a limited form of world government with legally defined competences. Such a transformation of relations under international law into relations under municipal law happened every time sovereign States agreed to change a confederation into a federation. As long as the central government is to be granted merely limited authority and the residue is to remain with the member States of such a union, the federal pattern compares favourably with any other. While it leaves open the possibility of further integration, it ensures to the constituent States the maximum of freedom in spheres which, at the time, do not yet call for uniform regulation and an overriding central authority.

Bearing in mind the vested political and economic interests bound up with the survival of sovereign States and empires, the emotional forces sustaining them and the lack of any comparable world loyalties, such a possibility may be dismissed as utopian. Yet considered in terms of the magnitude of the challenge which the occurrence of two world wars in one generation and the invention of unprecedented means of destruction present to world civilization, a federal framework for world society and world law may provide just a commensurate

answer to a problem that the world may ignore at its peril.

SUGGESTED READINGS

BRIERLY, J. L. *The Outlook for International Law.* 1945.
EAGLETON, C. *The Forces that Shape our Future.* 1945.
FRIEDMANN, W. *What's Wrong with International Law?* 1941.
HUDSON, M. O. *International Tribunals.* 1944.
JESSUP, P. C. *The Reality of International Law.* '*Foreign Affairs,*' 1940.
KEETON, G. W. *International Law and the Future.* '*Transactions of the Grotius Society.*' 1942.
LAUTERPACHT, H. *An International Bill of the Rights of Man.* 1945.
SCHWARZENBERGER, G. *Ius Pacis ac Belli?* '*The American Journal of International Law.*' 1943.
——*International Law as Applied by International Courts and Tribunals.* 1945.
WALZ, G. A. *Wesen des Voelkerrechts und Kritik der Voelkerrechtsleugner.* 1930.
WINFIELD, P. H. *The Foundations and the Future of International Law.* 1941.
WRIGHT, QU. *International Law,* in '*Contemporary World Politics.*' 1939.

CHAPTER 8

THE PROBLEM TO-DAY: NATIONAL SOVEREIGNTY *VERSUS* WORLD ORDER

'Every succeeding scientific discovery makes greater nonsense of old-time conceptions of sovereignty.'

(Mr. Eden, 1945.)

THE central point of all discussions on the effectiveness of international law and the durability of successive experiments in international order is the problem of national sovereignty. Broadly speaking, the layman is fully aware of the nature of this problem. States in the past have been hesitant to recognize any compulsive machinery higher than themselves. Accordingly, international law has lacked the sanctions which, in the last resort, compel obedience to State-law. However much such a system might have been tolerable in the past, it is to-day increasingly an anachronism in view of the rapid progress of scientific invention, especially in its application to weapons of war. In the present Chapter, an attempt will be made to indicate the growth of the conception of national sovereignty, its effect upon international law and the League of Nations experiment, and its relation to the problem of world peace to-day.

NATIONAL SOVEREIGNTY AND THE GROWTH OF INTERNATIONAL LAW

The medieval world knew nothing of national sovereignty. In theory there existed Christendom, with its twin heads of Pope and Emperor—a unifying conception, exercising considerable influence upon political and philosophical speculation until the close of the Middle Ages. In the world of reality there was feudalism, with its implications of contractual relationship between overlord and tenant. Both were governed by the law, and that

law could only be changed by the consent of both. In any event, the authority of the lay courts was limited by the existence of ecclesiastical, mercantile and other jurisdictions. Moreover, the sentiment of nationality was not yet born. France, Germany, Italy and Spain were merely geographical descriptions, covering a miscellaneous assortment of petty lordships, established by the centrifugal element in the feudal system. Even England had to pass through the long-drawn-out ordeal of the Wars of the Roses before a truly national sentiment could be said to exist.

In the sixteenth century, however, fundamental changes took place. Gunpowder rendered the old feudal levies obsolete, and permitted vigorous kings to raise powerful armies independently of the approval of the baronage. In the economic sphere, too, feudalism had broken down, and the discovery of the New World dealt it its death-blow; whilst in the sphere of religion the Reformers split Christendom and destroyed the last unifying element among the peoples of Western Europe. Within the space of half a century, powerful nation States were established in England, France and Spain, able to compete on terms of equality with the Imperial power, whilst Sweden and, at a slightly later date, Russia, appeared upon the political scene as considerable European powers. For the first time since the fall of the Roman Empire, absolute and uncontrolled authority existed in Western Europe. Rulers arrogated to themselves as a matter of course the right to prescribe the religious beliefs of their subjects, and even Protestantism brought no more liberal outlook than Catholicism upon this point. Meanwhile since warfare had lost the constraints which feudalism had imposed in the interests of the nobles, or which the mercenaries applied in their relations with one another, it became increasingly ruthless, culminating eventually in the prolonged horror of the Thirty Years' War.

As in these days, so at that time there were political and legal philosophers prepared to explain and justify what was taking place. Machiavelli, generalizing from the conditions which existed in the Italy of his day, delivered a frontal attack upon the theory that any tangible restraints could be imposed upon the conduct of a ruler in his dealings either with his subjects or with foreign States. In his view, there are no legal restraints upon the ruler's power, and whatever moral restraints there are, are of his own making, and are based purely upon expediency. A wise ruler will normally keep faith both with his own subjects and with foreign princes; for it is desirable to acquire a reputation for trustworthiness which will enable him to prosecute his aims without undue hindrance. In times of grave emergency, however, he will not hesitate to break his word because the ultimate object—the advancement of his own power—justifies such a course. There are implicit in this philosophy two doctrines which greatly retarded the growth of a true international community—the doctrine that 'necessity knows no law,' which has survived in the international sphere, although the rapid advance of democracy rendered it until recently of little importance in the domestic affairs of a State; and the theory of State-sovereignty, which has proved the greatest obstacle of all to the development of international order.

Although Machiavelli may have expressed his point of view somewhat crudely, he was basically at one with the prevailing school of Renaissance political thought. Even Luther added something to this philosophy, since his championship of a reformed faith did not take him beyond the doctrine of *cujus regio ejus religio*. This principle received international recognition in the Peace of Augsburg, which ended the first phase of the religious wars in Germany. Even in countries which repudiated Lutheranism, for instance Spain, and England during the reign of Henry VIII, this doctrine was seized upon to

subordinate Church to State, and thereby to exalt the power of the ruler. Eventually, towards the end of the sixteenth century, a French political theorist, Jean Bodin, in *Les six Livres de la République*, formally enunciated the modern doctrine of sovereignty. Defining it as the supreme authority within the State, whence all laws proceed, he declares that in its formulation of laws it is subject to no human restraints. The medieval theory of a Law of Nature in Bodin's scheme has been reduced to a factor which may influence a ruler's conscience. A law which conflicts with it must nevertheless be obeyed; for it derives its validity from the absolute authority, or sovereignty, of the ruler, which no other authority can challenge.

The general acceptance of this theory in Western Europe brought with it important changes in the organization of States. Prior to the Renaissance, as has already been pointed out, there was no uniformity of jurisdiction over the inhabitants of a particular territorial area. A man might be subject to feudal law, to ecclesiastical law, or to mercantile law. This was a survival of the old personal conception of jurisdiction which was such a striking feature of the period which followed the break-up of the Roman Empire in Europe. Consequently, it will be found that where a number of foreigners resided within the dominions of an alien ruler (often for purposes of trade), exemption from local jurisdiction, either complete or (as was more frequently the case) for civil disputes only, was freely conceded. The extension of the authority of the State (or its ruler) over its territory, however, brought with it not only the decay of the feudal and ecclesiastical courts, but also the subordination of resident foreigners to the local law. It became exceptional to concede immunity from local jurisdiction to foreigners by treaty, although in areas where Western conceptions of sovereignty had not penetrated, foreign traders made good their claims to immunity, and the

system of extraterritoriality which was established lasted until our own day. It is interesting to notice in connection with these arrangements that they were only seriously resented when the Western theory of sovereignty had made headway in the Eastern countries in which the system existed. Prior to this, neither the Ottoman Empire nor China had regarded the immunity of foreigners from local jurisdiction as a serious impairment of their status. Indeed, in the case of the former, the initiative for the system seems to have come from the Sultan, and not from the foreign communities, since Muslim law was regarded as inapplicable to unbelievers.

It was assumed by the majority of the writers of the sixteenth century that this plenitude of political power which they described necessarily belonged to the rulers. In Machiavelli and in Bodin this was axiomatic, and with this hypothesis was merged the theory of the 'divine right of kings.' The ruler, from the very definition of his authority, could be responsible to no earthly power. His responsibility was to God alone, and the Divine, or Natural Law, was a moral precept, not a legal limitation upon sovereignty. From this conception of absolutism, there was in the seventeenth century, particularly in England, a reaction in political theory, following hard upon the struggle between King and Parliament. One phase of that reaction is illustrated by the *Leviathan* of Thomas Hobbes. According to him political power is still absolute and uncontrollable, but it is no longer inherent in the person of a single individual. It can be enjoyed by a group, and so, in England, for the divine right of the monarch there came to be substituted the divine right, or sovereignty, of Parliament. This, in turn, gave birth to a rigidly positivist view of law as being a collection of commands of the legal sovereign backed up by the organized force of the State. The jurist is not concerned with the purpose of law, or with its rightness or wrong-

ness. He merely analyzes the precepts laid down by the sovereign authority. Ultimately this conception of law is summed up into a complete doctrine by Austin. Sovereignty according to him has two characteristics: First, the bulk of a given society must be in a state of submission to a determinate political superior; and, second, that superior must not be in the habit of obedience to any other human superior. As a necessary result, sovereignty in the legal sense is both illimitable and indivisible. A divided sovereignty would lead to confusion. It should be noticed, however, that this last proposition has not gone unchallenged. Some writers have accepted a division of functions, with a corresponding division of sovereignty, for instance, between executive and legislature.

It is unnecessary to pursue the applications of this theory of sovereignty in the internal affairs of a State to their ultimate implications, but it must be noticed that it broke down the medieval system of checks and balances, and left the individual face to face with an all-powerful sovereign State. It was left to the totalitarian dictatorships of the twentieth century to exploit this position to the utmost limit. Thus, in his *Transformazione dello Stato*, Alfredo Rocco writes:

'The fascist State is the only truly sovereign State, dominating all the forces existing in the country and subjecting all to its discipline. . . . This theory of the sovereign State is really not new, for the whole legal school of public law professes it. This school has always taught that sovereignty is not of the people but of the State, a principle asserted in all the writings of all the teachers of public law, foreign and Italian, and also of our jurists, who then called themselves liberals or democrats in politics, without really raising the doubts implied by the patent contradiction in which they became involved . . . superiority of ends, supremacy of force. These terms sum up the idea of the fascist State. The

new fascist legislation tends to realize this conception of the State.'

Naturally, the conception of the sovereign State has made a particularly strong appeal to modern forms of fascism. Even in this respect, however, they cannot claim any originality. Indeed, the theory was born out of the strong State of the Renaissance, so startlingly unlike any medieval political organization. An English writer in the reign of Elizabeth declared in his *Homily on Wilful Rebellion*: ' A rebel is worse than the worst prince, and rebellion worse than the worst government of the worst prince has hitherto been.' In this brief statement issue is directly joined between the State and the individual, with all the odds in favour of the State. Only the uprising of popular sentiment, leading to the democratic movement of the nineteenth century, retarded the advance of that political juggernaut, the all-conquering State.

It was not only in the domestic affairs of the State that this new theory of sovereignty created new problems. In the international sphere, the difficulties seemed at first to call even more urgently for solution. The period between the discovery of America and the Peace of Westphalia in 1648 was a period of international disorder, rendered acute by the variety of aspirations, religious, economic and dynastic, which were seeking satisfaction. The conduct of wars during this period by mercenary armies, in place of the earlier feudal levies, was accompanied by an outburst of brutality towards the civil population unknown since the Dark Ages, and only possible because the earlier restraints upon warfare had broken down. When States rejected the authority of the Church in secular matters, and when they asserted their self-interest in defiance of the welfare of mankind as a whole, a reversion to every conceivable type of barbarism was not altogether unexpected. As Grotius says in the *Prolegomena* to his *De Jure Belli ac Pacis*: 'I saw prevailing throughout

the Christian world a license in making war of which even the barbarous nations would have been ashamed. Recourse was had to arms for slight reasons or no reason; and when arms were once taken up, all reverences for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint.'

To this Lawrence in his *International Law* adds: ' When his book was published, the worst horrors of the Thirty Years' War has not taken place. The sack of Magdeburg, the tortures, the profanities, the devastations, the cannibalism, which turned the most fertile part of Germany into a desert, were yet to horrify the world. But all this followed in a few years; and men who had lived through a whole generation of wars fitter for Iroquois braves than Christian warriors were glad to listen when one of the greatest scholars and jurists of the age told them that there was a law that curbed the ferocity of soldiers and bade statesmen follow the paths of honour and justice.'

Now Grotius was not the only writer who was seeking to formulate rules governing the external relations of States at this period, nor was he by any means the earliest. As has been mentioned before, his debt to Alberico Gentili is considerable, whilst there existed prior to both an important school of Spanish writers, of whom Victoria, Ayala and Suarez are the most important. Nevertheless, Grotius' writings won general acceptance whilst theirs did not, and the reasons for this have been given in an earlier chapter. Yet it is pertinent to re-emphasize here that it was Grotius who, better than any one else, succeeded in finding a formula which reconciled natural law with State sovereignty. Perhaps the reconciliation was not so complete as many of his successors assumed; but it provided the starting point for a body of doctrine which was evolved without serious challenge during the three centuries which followed the publication of his book. The statesmen welcomed Grotius' frank accept-

ance of the implications of State-sovereignty. They found in him no academic appeal to an outworn concept of world-church and world-empire. That was gone, and in its place was an assembly of independent sovereign States. Those States, however, were bound together by natural law, which supplied a pattern of behaviour which the States are imperfectly attempting to reproduce in their external relations. To this proposition statesmen, canonists and jurists could alike give their adherence, more particularly because Grotius derived a number of the rules of the positive law of peace from Roman Law, to which jurists and canonists alike gave their allegiance. Statesmen could accept these principles with complacency because they were favourable to theories of absolute ownership, which the ruler had now come to associate with his control of a defined area, and of the inhabitants within it. Furthermore, Grotius emphasized that international law was a law between States only and not between individuals, directly excluded the internal government of States from its purview and, therefore, indirectly supported the irresponsibility of the rulers. Luther has often been condemned for his doctrine of passive obedience in the sphere of religion, but precisely the same criticism can be brought against Grotius in the sphere of law. In both cases the result of the attitude taken up was to exalt the power of the State and of its rulers.

The effect of this basic attitude has been to make international law a formal science, accepting the concept of State-personality without enquiry, and refraining from investigating what sociological reality lay behind it. 'Primarily,' says Hall, in the first chapter of his treatise on *International Law*, 'international law governs the relations of such of the communities called independent States as voluntarily subject themselves to it. . . . The marks of an independent State are that the community constituting it is permanently established for a political end, that it possesses a defined territory, and that it is

independent of external control. It is a postulate of these independent States which are dealt with by international law that they have a moral nature identical with that of individuals, and that with respect to one another they are in the same relation as that in which individuals stand to each other who are subject to law. They are collective persons, and as such they have rights and are under obligations.'

It was assumed by a good many positivist writers on international law that this legal system must always remain an imperfect law in the sense that it lacked an exterior coercive sanction; for if such a sanction existed, the States would have lost their independence, and the existing fabric would be replaced by some other—perhaps by a world government. The very profundity of such a change served to keep it in the furthest background, and so in the existing framework of international law States found a formidable theoretical defence of their existence and continuance. Accordingly, the blunt Austinian deduction that international law was not law at all since it was not based on coercion was largely ignored, as it emphasized too strongly the weakness of the underlying assumptions of that law. If States chose to act habitually in a quasi-legal fashion, that was the convincing proof of the existence of law.

International law, as interpreted by the positivist School, is based on the two principles of the absolute independence of States in the internatonal sphere, and their voluntary subjection to the law. These two principles are obviously complementary, and they lead to certain other conclusions which held good so long as classic international law was generally applied. Of these conclusions, the first is that international law has nothing to do with internal changes in the structure of a State. Its personality is unchanged by revolutions or changes in the form of government in a State. This in turn leads to the obligation to refrain from intervening in the

internal affairs of another State unless some vital interest of the intervening State is threatened. This ' live and let live ' principle can only operate without serious strain in a reasonably orderly and stable international society, where the members are not only upon a footing of legal equality but also of roughly equal political potentiality—that is to say in a society in which each member regards itself as substantially capable of self-development, and the members of which are broadly satisfied with the territorial limits which had been assigned to them. This was broadly true of the European State system prior to 1914. Its most vigorous members had an outlet for their energies in colonial enterprises outside the continent of Europe. Two others had problems of unification to solve. Now that the whole of the world is parcelled out, so that there are no new fields of colonial enterprise open to the more active States, the problem of redistribution of territories has become much more acute. This emphasizes the urgent necessity of finding a workable machinery of peaceful change, which will take into account the natural growth of States as well as problems such as access to raw materials and markets, or the thorny issue of international migration.

Another basic principle of international law is that agreements solemnly undertaken must be fulfilled. International treaties, when violated, could give rise to no other right than ultimately a right to use force to secure redress. Yet it was generally recognized that unless reliance could be placed upon the pledged word, the whole fabric of international intercourse would necessarily collapse. So far was this principle carried that it even governed treaties imposed by threat of force on one of the signatories—an obvious departure from private law principles. At times, the Greater powers went to considerable lengths to secure apparent conformity with the principle of *Pacta sunt servanda.* During the Franco-Prussian War, Russia seized the opportunity

thus presented to repudiate those clauses of the Treaty of Paris of 1856 which seriously limited her national sovereignty in the Black Sea ports. After the War a conference was held which solemnly affirmed that 'it is an essential principle of the law of nations that no power can liberate itself from the engagement of a treaty, nor modify the stipulations thereof, unless with the consent of the contracting powers by means of an amicable arrangement.' Yet simultaneously Russia was formally granted the right she had claimed unilaterally to assert. Hall's comment upon the episode is instructive. He declares that the force of the declaration 'may have been impaired by the fact that Russia, as the reward of submission to law, was given what she had affected to take. But the concessions made were dictated by political considerations, with which international law has nothing to do. It is enough from the legal point of view that the declaration purported to affirm a principle as existing, and that it was ultimately signed by the leading powers of Europe.' A more categoric assertion of the formal nature of international law could hardly be made.

However, there were signs in the latter part of the nineteenth century that this principle was being subjected to considerable strain, and, in consequence, the principle of the *clausula rebus sic stantibus* was more frequently enunciated than before. This principle suffered, however, from the serious defect that it proved impossible to define without recourse to international arbitration whether, in a concrete case, there was a change in fundamental circumstances which had been assumed by the parties to a treaty. Moreover, the unilateral annexation of Bosnia and Herzegovina by Austria in 1908, in clear breach of Austria's international obligations, indicated that, altogether apart from the doctrine of *rebus sic stantibus* respect for the pledged word was weakening, and Hall's comment on this episode that the failure of

Europe to take collective action on behalf of its solemn obligations did more to impair the values of international law as a restraining force on public conduct than any event of recent years, seems entirely justified. In the War of 1914-1918, there were repeated violations of treaty obligations, beginning with the violation of Belgian neutrality by Germany in 1914. These were justified on one or two main grounds, either as cases of State necessity or as reprisals for prior violations of treaty obligations. Whilst it may be said that violations of international law in time of war are perhaps not such direct threats to international order as the action of Austria-Hungary in 1908, it cannot be denied that cumulatively their effect has been very great. Ultimately, all these breaches of international law have been excused by the necessity of preserving the existence of this or that State at any price, culminating in the post-1919 period in acts such as the repudiation by Germany of successive portions of the Versailles Treaties, by Italy of the Covenant of the League and Kellogg Pact in her invasion of Abyssinia, and by Japan of the Covenant, the Kellogg Pact and the Washington Treaties in her invasion of Manchuria in 1931, and again in her invasion of China proper in 1937.

These acts of lawlessness, in turn, were dwarfed into insignificance by the successive and indiscriminate infractions of international law by Germany, Italy and Japan in the Second World War.

The third principle which follows from a system of international law resting on the conception of absolute State sovereignty is that, in the absence of universal and comprehensive machinery for the pacific settlement of international disputes, 'war is the litigation of States.' Thus, international law was compelled to accept the fact of war, and following the lead given by the naturalist writers, could do no more than seek to mitigate its effect by elaborating rules for its proper conduct. Indirectly,

therefore, these writers have set the seal of legality and normality upon warfare, instead of treating it as a breach of international order, which all parties ought to terminate at the earliest possible moment. This would have involved greater emphasis being placed on the necessary shortcomings of existing international law and a firmer advocacy of peaceful methods of settling international disputes. Instead, text-book writers, after discarding the distinction between just and unjust wars, allowed themselves to be side-tracked into discussion of the legality of the various methods by which wars could be waged. In this discussion they have done little more than re-define, in quasi-legal terms, the successive developments in the art of warfare which have taken place during the last three centuries. It is plain that for the future the international lawyer must adopt a more outright attitude to war than he has done in the past, and instead of regarding it as a regulated contest between two litigants, he must define it for what it is: a direct threat to the well-being of the international society, substituting brute force for the appeal to reason, and solving no problem of international intercourse. From this point of view, the Nuremberg trials of the Nazi leaders may be regarded as a portent, emphasizing that outraged international conscience will inflict the very heaviest penalties upon those who deliberately plan and execute aggressive wars.

A fourth principle underlying traditional international law is that it is limited to relations between sovereign States, with perhaps the addition of a few analogous, but slightly anomalous communities. The individual as such had no existence in the international sphere. He was swallowed up in the personality of his State. This attitude has worked untold harm. It has thwarted the development of a proper consciousness of the international society, notwithstanding the rapid multiplication of means of transport and communication, and the

increasing economic interdependence of units in that international society. It has permitted statesmen and publicists to personify abstractions, and endow them with characteristics, so that 'Britain,' 'Germany' and 'France' have come to enjoy mythical attributes as collectivities. The identification thus made has been greatly exaggerated in the mind of the individual citizen and has thus formed a fruitful source of international discord, obscuring the real sources of international unrest. Furthermore, it has given birth to exaggerated theories of State, applicable not only in the international, but also in the domestic sphere, leading to the regimentation of educated human beings upon a scale, and with a thoroughness, not paralleled in the world's history. This regimentation has been rendered the more formidable by the prodigality of the resources at the disposal of modern governments, while the refusal to grant proper status to the individuals for whose well-being States exist and to horizontal groupings on an international scale has, in itself, increased the difficulties of international intercourse. Moreover, the irresponsibility of the State to the individual in international law has given to the State, or rather to those who temporarily control it, a dangerous and intoxicating immunity from control which upon occasions has been grossly abused. Finally, the personification of abstractions has made it possible for international relations to be conducted in accordance with a standard of morality, based upon a narrow conception of the State's material self-interest, which has long since been abandoned in so far as the individual is concerned. In such an atmosphere, the employment of war as an instrument of national policy has been regulated only by the necessity of organizing public opinion in support of the proposed policy. This in turn has given rise to one of the most fertile causes of modern international misunderstanding—a comprehensive and unscrupulous system of propaganda permeating the whole social structure of the modern

State. If, however, the reality of the international society be accepted, the responsibility of a State for conduct prejudicial to the welfare of that society necessarily follows.

THE LEAGUE COVENANT AND STATE SOVEREIGNTY

It is scarcely a matter for surprise that the prosecution of a major war brings with it a general desire among both belligerents and neutrals for some more secure form of international organization than has previously been elaborated. Thus the Revolutionary and Napoleonic wars were responsible for the Holy Alliance, whilst the later stages of the war of 1914-18 produced a heavy crop of literature advocating the establishment of a League of Nations. Only a few years before, publicists were vociferous in asserting that the Hague Peace Conferences had ushered in a new era in international relations, during which mankind could look forward to a long period of unbroken peace and steady material progress. They had felt equally sure that respect for international law was firmly based upon a public opinion whose censure would be sufficient to deter the potential lawbreaker. Yet the First World War made it necessary to abandon these doctrines, which were in fact no more than a late outcrop from a pseudo-historical school of jurisprudence, with its underlying philosophy of the progressive evolution of the human race towards increased law abidingness.

The newer movement for the closer association of States may be regarded as having been launched at the foundation of the American League to enforce Peace at Philadelphia in June, 1915, closely following a weighty address by President Taft upon the same topic. In view of the later history of Article 16 of the Covenant of the League, it is enlightening to observe that this meeting framed four main points only for a future League. The first declared that all justiciable questions should be submitted to an international judicial tribunal, the second added that all other disputes not settled by negotiation

should be submitted to a Council of Conciliation for decision, and the third article ran: 'The Signatory Powers shall jointly use forthwith both their economic and military forces against any one of their members that goes to war, or commits acts of hostility against another of the signatories before any question arising shall be submitted as provided in the foregoing.' In order that there should be no misconception concerning this article, the American League added the following interpretation: 'The Signatory Powers shall jointly employ diplomatic and economic pressure against any of their members that threatens war against a fellow signatory without having first submitted its dispute for international inquiry, conciliation, arbitration, or judicial hearing, and awaited a conclusion, or without having in good faith offered to submit it. They shall follow this forthwith by the joint use of their military forces against that nation if it actually goes to war, or commits acts of hostility against another of the signatories before any question arising shall be dealt with as provided in the foregoing.' The fourth article provided for Conferences for the codification of international law.

The entry of the United States into the war brought this question more prominently before the Allied Powers, and there was a considerable body of opinion in several Allied States prepared to support it. Indeed, already at the beginning of 1917 the Allied Powers had signified to President Wilson their wholehearted agreement with the proposal to create a League of Nations, recognizing the benefits which would accrue 'from the institution of international arrangements designed to prevent violent conflicts between nations so framed as to provide the sanctions necessary to their enforcement, *lest an illusory security should serve merely to facilitate fresh acts of aggression.*' How necessary this seemed in 1918 is shown by Lord Curzon's speech in the House of Lords on June 26th, 1918, defining the attitude of the British Government

towards the proposed League. He said: ' We must try to get some alliance, or confederation, or conference to which these States shall belong, and no State shall be at liberty to go to war without reference to arbitration, or to a conference of the League, in the first place. Then if a State breaks the contract it will become *ipso facto* at war with the other States in the League, and they will support each other, without any need for an international police, in preventing or in repairing the breach of contract. Some of them may do it by economic pressure. This may apply to the smaller States. The larger and more powerful States may do it by the direct use of naval and military force. In this way we may not indeed abolish war, but we can render it a good deal more difficult in the future. These are the only safe and practicable lines at present, and the lines upon which the governments are disposed to proceed.'

A further and fuller expression of the same point of view is to be found in General Smuts' pamphlet, written in the last days of the War, and entitled *The League of Nations: A Practical Suggestion.* The great value of this pamphlet consists in its conception of the League as a powerful administrative body, supervising the execution of many international undertakings, including that of the government of backward populations in the colonies of ex-enemy Powers. As far as sanctions are concerned, the position of General Smuts was identical with that of Lord Curzon. Resort to war in defiance of undertakings to the League placed the offender automatically in a state of war with all other members of the League, without any declaration of war being necessary.

The publications of advocates of a League of Nations, as well as the pronouncements of American and Allied statesmen had therefore indicated the desirability (and, indeed, the necessity) of establishing a strong League if the peace was to be preserved, and the history of international intercourse during the inter-war years abun-

dantly proved that they were right. As soon as the task of drafting the Covenant was undertaken, however, difficulties multiplied, and it became necessary to make compromises in order to soothe the susceptibilities of important sections in the various Allied countries, which were by no means happy at the prospect of pooled security and the submission of international disputes to either a judicial tribunal or a council of representatives of member States. Issue was joined at the outset. When the text of the Covenant was published in Britain in 1919, it was accompanied by a Commentary, which explained the purpose of the League in the following terms: ' It is not the constitution of a super-State, but, as its title explains, a solemn agreement between sovereign States, which consent *to limit their complete freedom of action* on certain points for the existence of themselves and the world at large. *If the nations of the future are in the main selfish, grasping and warlike, no instrument or machinery will restrain them. It is only possible to establish an organization which may make peaceful co-operation easy and hence customary*, and to trust to the influence of custom to mould opinion.' This may have been a cautious commendation of the Covenant to those sections of the community who wished to preserve complete freedom of action to this country in the future. Yet it may represent an official retreat from the aspirations which received official blessing in the last year of the war. General Smuts, at any rate, and many others with him, had expected more, and the whole machinery of sanctions against an aggressor had been framed to achieve more.

With such an introductory explanation, however, it was plain that the Covenant itself would show clear signs of compromise between the views of those who, like General Smuts and President Wilson, wished to see the creation of an effective international authority with power to prevent wars of aggression, and those who were not prepared to make any substantial concession upon

the key issue of State sovereignty. An analysis of the articles of the Covenant of the League of Nations will show to what extent the views of this second school prevailed. Article I, by which the League is constituted, is based avowedly upon consent. This, of course, is not fundamental, since the original federation of the States of the American Union was similarly based on consent. There is, however, a fundamental difference between the two associations. In the United States there was no right of secession, and the American Civil War was fought purely upon this issue, which involved the further issue whether the States in the American Union, in federating, had preserved their sovereignty unimpaired or not. In the Covenant, however, express provision was made for the withdrawal of States on giving two years' notice. Why was this provision inserted, unless for the express purpose of preserving complete freedom of action to members in the future? This provision, it is significant to notice, was not in the original draft of the League Covenant. Its insertion shows the extent to which States, in the first months of peace, were already weakening in the desire for the preservation of peace based upon an effective international authority. Sir Frederick Pollock, in commenting upon this part of Article I, says: 'The provision for withdrawal from the League at two years' notice was not in the Draft. It does not seem very likely to be acted upon; if the League were to break up it would break in a different fashion, and so long as it holds firm one can hardly conceive what should make it desirable for any one State to secede. Nevertheless, this clause is important in so far as it clearly shows that the League is a concert of independent Powers and not a federal union, and does not aim at establishing a supernational government. There is a school of publicists who may regret this, including some able Americans who know everything about the higher politics except that Europe is not America, and the Supreme Court of the United

States is not a pattern that can be reproduced to order. Peradventure their ideal may become practicable a century or two hence, unless the whole of our political machinery has become as obsolete as feudalism, which it may then be for anything we know. What is certain is that the time is not ripe at this day for a cosmopolitan federation. It may be added that the formal ease or difficulty of rescinding a compact has no constant relation whatever to its stability in practice. Many partnerships at will, many lettings determinable at half a year's notice or less, many tenures of offices held at pleasure or renewable at short intervals, have lasted over a generation or more, as any man of business can avouch. Let us hope that a hundred years hence the clerk in charge of the file of withdrawal notices at the Secretariat of the League may be as hard to identify as was in the early nineteenth century the clerk of sessions in the old Court of Common Pleas. On the other hand we know too well that no peace or alliance was ever made perpetual by calling it so, not to speak of marriage or other examples in the sphere of private affairs.'

These observations obviously reflected the view propounded in the official Foreign Office commentary, and unquestionably represented opinions then widely held, both in Great Britain and elsewhere. The references to American publicists are singularly unfortunate, for the history of the League has proved that they were right, and that Sir Frederick, in this instance, was wrong. The machinery of withdrawal has been one of the few parts of the League's machinery which was thoroughly understood and used in subsequent years, whilst the concluding observations relating to old-established English institutions, based on the community of interest of the parties, were ignored. In dealing with States, the verdict of history is against Sir Frederick. By several notable examples, the lesson has been taught that confederations are of a less permanent character than federations. Had

the views of the opponents of the American Federalists prevailed, the American Civil War would not have been fought, and the United States would not exist to-day. That the League of Nations suffered the same fate as the Germanic Confederation established in 1815 need surprise no one. Yet in the second half of the nineteenth century, Germany was unified with a different constitution, this time based on overriding and centralized force. It is surprising that the moral of these two experiments was so completely overlooked.

One further point in the first Article deserves notice. It provides that any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military and naval forces and armaments.

The second part of this provision affords little difficulty since the League failed to secure disarmament. Yet it is interesting to note that no attempt was ever made to define in general terms what was meant by an intention to observe its international obligations, which presumably was intended primarily to secure loyalty to the Covenant. As Pollock aptly says, in discussing the Article as a whole, it was intended to create a club, yet no one has yet seriously contended that even a national State, where there is more identity of interest between members than there was in the League, can be effectively governed on club principles. From whatever point of view the subject is approached, the conclusion is reached that the representatives of the States who accepted the Covenant disliked the idea of the application of force to a recalcitrant member. This reticence could not have been due to inherent dangers of such a course, since, in 1919, the Allied and Associated Powers were all powerful,

and the emergence of Italy, Japan and Germany as irreconcilable and strong opponents of the League idea had then been contemplated by no one. Yet this attitude can be explained with ease, if allowance is made for the uneasiness of the victorious nations at policies which might inconveniently limit their own freedom of action in the future. It was for this reason that they were not prepared to make any real concession upon the cardinal question of State sovereignty. This was the more unfortunate since in 1919 there was an identity of interests among the framers of the League Covenant which was never subsequently approached. At that time, moreover, the task of making the coercive authority of the League an effective reality would have been incomparably easier than it was when, belatedly, the League decided to make an experiment with sanctions during the Abyssinian War.

Articles 2 and 3 of the Covenant created the organs of the League—the Assembly, the Council and the Secretariat. Two important issues are wrapped up in these Articles, and neither of them has received the attention merited by their importance. In the words of President Wilson, the War of 1914-1918 was fought 'to make the world safe for democracy.' The concession made to this principle in Article 1 of the Covenant (*self-governing* State) was whittled away in the practice of the League of Nations, and not even the drafters of the Covenant intended that the citizens of the member States should have any say in the selection of the representatives of their States in the League of Nations. Representatives of States, both to the Council and to the Assembly, were nominated by the government of the day without any reference whatever to the peoples of those States. Not infrequently, therefore, the utility of a member's contribution to League proceedings was seriously injured by the common knowledge that he represented a government which no longer fully possessed the confidence of

his country. Among the lesser States, this was a more frequent defect than among the Greater powers. Yet there were occasions when the influence of even the French delegates was limited in this way. On this question, the Constitution of the United States offers a pertinent object lesson. Originally, representatives of the States in the Senate were elected by the legislatures of the States. When it was found that this indirect election impaired the authority of the Senators, a constitutional amendment substituted direct elections, and the result has been a steady increase in the authority of the American Senate. There were, indeed, critics of the League Covenant in 1919 who were puzzled by this decision, but their criticisms received little publicity. Pollock's comment on this point is instructive. He says: 'Independent powers deal with one another through their governments and not otherwise. . . . In the strict theory of international law the government of every State is as regards every other State an indivisible and impenetrable monad.'

This fundamental defect could scarcely have been more neatly put. It petrified and canonized an abstraction. States are sovereign persons in international law, and therefore everything which in any way impairs that sovereignty must be uncompromisingly opposed. The psychological consequences were disastrous. The peoples of member States regarded the League as something remote, alien, and at times actually hostile to their national interests, and statesmen assembling at the League preserved a dangerous freedom. They were accountable only to their own colleagues, from whom they received instructions. This, in itself, was fatal to any true growth of League authority. More than any other factor, this state of affairs hindered the formation of any true international opinion upon the great issues of the day. Even in the early days of the League's existence Lord Cecil was conscious of this defect, and suggested that, in addition to the Council and the Assembly, there should be

a third body of representatives popularly elected. But his proposal failed to secure any measure of support from the governments of the day, and it therefore lapsed.

Still a further concession was made to State sovereignty in Article 5 of the Covenant by the requirement of unanimity in the Assembly and Council, except in certain specified cases. On this the official British Commentary says: 'At the present stage of national feeling sovereign States will not consent to be bound by legislation voted by a majority, even an overwhelming majority, of their fellows. But if their sovereignty is respected in theory, it is unlikely that they will permanently withstand a strong consensus of opinion, *except in matters which they consider vital.*'

The last qualification was unfortunate. Even prior to 1914, many of the leading States of the world had signed arbitration treaties, reserving only questions of national honour and vital national interests, and the Commentary therefore suggested that the Covenant represented little, if any, advance upon this system, and that when a powerful State considered that a vital interest was involved, the Assembly could take no concerted action, and the recalcitrant State would therefore preserve its freedom of action. In addition to the Assembly, the Council could make recommendations to the disputing parties, but it is hard to see in what particular, apart from its character as a permanent institution, the Council differed in substance from a pre-war Congress, and again unanimity was normally required. Admittedly, this issue is by no means a simple one; for it would have been productive of the most serious consequences had it been possible for a majority of the smaller powers to commit the Greater ones. Though it should not have been impossible to devise some method of representation to meet this difficulty, there is no evidence that the problem was ever approached from this point of view.

Article 8 contains the well-known provisions for dis-

armament together with a declaration that ' the members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections.' The history of this Article supplies the key to the true attitude of members towards the obligations they had undertaken. If members intended the Covenant to be a real guarantee against aggression, then disarmament beyond what was required to discharge the international obligations of the member States under it, including due precautions against the attack from a non-member, followed automatically. The attitude of members at successive sessions of the Disarmament Conference made it clear, however, that they did not regard the Covenant in this light, and it therefore followed that no agreement on disarmament was possible. Finally, the condemnation of the private arms traffic was regarded as an interference with the domestic affairs of sovereign States, and the part of the Article in which provision was made for the elaboration of machinery to suppress such traffic, was allowed to become a dead letter. The attitude of the members upon the crucial question of disarmament having been so clearly demonstrated, it was therefore only to be expected that Article 10, guaranteeing the territorial integrity of members, proved equally valueless.

Under Article 14 of the Covenant provision was made for the establishment of the Permanent Court of International Justice with competence ' to hear and determine any dispute of an international character which the parties thereto submit to it.' The Statute of the Permanent Court, when drawn, affirmed categorically the inviolability of State sovereignty. ' Only States,' declares Article 34, ' or Members of the League of Nations can be parties in cases before the Court.' Thus, any case, in which primarily not States, but individuals, companies or groups which were not recognized as subjects of international law, were involved, could come before the

League Court only if it was adopted by a State or member of the League of Nations.

Article 19 of the Covenant provided that the Assembly should have power to give advice on the reconsideration of treaties which had become obsolete, and on the consideration of international conditions the continuance of which might endanger the peace of the world. This Article proved such a potential source of embarrassment to members that, apart from two instances when it was unsuccessfully invoked, it was never used. It plainly indicated two things: a general supervisory jurisdiction of the League in the general interest of the international society and a possible limitation upon State freedom of action. For both reasons, it was generally disliked.

Finally, it should be noticed that the humanitarian activities of the League set out in Articles 23 and 24 were organized on a voluntary basis, that is to say, the League could arrange conferences and prepare conventions, and the members could adopt their conclusions or not as they chose. Even in this field, remote as it is from the central issues of power politics, the record of the League has not been impressive, and the host of unratified Labour conventions indicates that the conception of State sovereignty protects not only the arbitrament of force, but equally a good many vested interests which find it convenient to take shelter behind the national cloak.

The main justifications for the form which the League Covenant assumed were two. It was said that it was the utmost that was possible at the time; and it was hoped that once the League was established, the habit of legality and a League attitude of mind would grow. Whilst the first proposition is undoubtedly true, the second aspiration was not achieved, and it was unfortunately not realized in 1919 that if the Covenant was the utmost which could be secured then, it was scarcely to be expected that Powers could be prepared to go further

when the shadow of the great catastrophe which had brought it into existence had passed away.

NATIONAL SOVEREIGNTY AND THE FAILURE OF THE LEAGUE OF NATIONS

The League may be said to have been established for two main purposes: First, the settlement of disputes which, if left to the contesting parties, would lead to war; and secondly, in consequence of the achievement of the first purpose, the attainment of security within the collective system. As has been shown in a previous Chapter, these two objects are not the only conditions on which the maintenance of world order depends. There was no adequate machinery for peaceful change, and questions such as the promotion of international trade by the removal of trade barriers, and problems such as currencies and access to raw materials and markets, do not seem to have received extended consideration from the founders of the League, although from time to time the League has been compelled to take partial cognizance of these matters. Even judged upon its two avowed main objects, however, the League of Nations failed completely; and foremost among the reasons for that failure the conception and reality of State sovereignty must be mentioned.

To take the question of the settlement of disputes first, the League, in the early years of its existence, handled several disputes firmly and with credit. Several of those disputes and the methods by which they were settled are well described by Mr. Conwell Evans in his monograph, *The League Council in Action.* Thus there was the dispute in 1920 between Sweden and Finland over the Aaland Islands, the narrowly averted war between Yugoslavia and Albania in 1921, or the Mosul dispute between Great Britain and Turkey. It is necessary to recognize, however, that a dispute such as that between

Sweden and Finland would not in any event have led to war, whilst the others, occurring so soon after the First World War, would not have been permitted to lead to a general war, even without a League. Let us admit, what Mr. Conwell Evans strenuously maintains, that the existence of the League machinery proved most valuable in providing for the separation of the combatants. Is there any reason to suppose that identical telegrams from Great Britain, France and Italy would in those days have proved less effective? The truth of the matter is that the League has been given credit in the books for a number of settlements which could have been made as effectively, and as speedily, under the system of pre-1919 diplomacy. It was not for the settlement of disputes of this kind that the League came into existence, but to avert the threat of war in serious disputes between major Powers.

In those early days, however, there were disputes involving greater League Powers which were less creditably disposed of. In October, 1920, Polish troops seized Vilna, which had been allotted by the Allies to Lithuania. The circumstances were rather confused. When the First World War ended, hostilities between Poland and Russia continued, and the Supreme Council of the Allies was therefore unable to fix a permanent Eastern frontier for Poland, but indicated a provisional frontier, known as the Curzon line, which excluded Vilna. In April, 1919, Poland captured Vilna from the Russians, but it was retaken in July, 1920, and ceded by the Russians to Lithuania. In the following month Poland took the offensive and recaptured Vilna, meeting with some armed opposition in the process. Whilst the war against Russia was still in progress, Poland appealed to the League against the opposition she had encountered from Lithuania. Eventually the League Council requested the two parties to desist from fighting and to withdraw to a line which still left Vilna in the possession of Lithuania. Poland,

however, ignored the Council's order, and continued the invasion of Lithuania in spite of an appeal to the League by Lithuania (who was not yet a member). The League had already decided to send representatives to the area of dispute, and to see that the provisional line drawn by the Council should be respected. Yet before the League representatives could carry out their instructions, a Polish general seized Vilna and remained there in defiance of the Western Powers. When Poland's campaign against Russia was crowned with victory shortly afterwards, and Poland's eastern frontier was at last secured, all pretence of seeking to oust her from Vilna was dropped. The first of the smaller Powers had been thrown to the lions and a precedent had been set. In 1923 the Conference of Ambassadors coolly ignored the League and awarded Vilna to Poland.

Mr. Conwell Evans, in describing the unsatisfactory handling of this episode by the League, is inclined to explain it on the ground that the League was in its infancy, and that the Supreme Allied Council was then regarded as the dominating factor. Admitting the first point, the second is in itself noteworthy. Poland, at war with the U.S.S.R., had nevertheless been able to defy Great Britain and France, at that time in unquestioned control of Western Europe, and had successfully despoiled Lithuania in opposition to the Western Powers. The reason is not far to seek. France had no desire to hamper the activities of her ally, engaged as she was in a life-and-death struggle with Russia, and the mishandling of the Vilna dispute, as Mr. Conwell Evans points out, can be traced directly to this cause. That in itself was a sinister fact. There was in fact no League policy throughout the incident. The various Powers concerned simply used the League machinery to further their own policies. Since, in this case, the policy of one of the dominating Powers did not coincide with the interests of the League, the League suffered, and this experience was repeated in

numerous instances in the interval between the First and Second World Wars.

It may be said that Poland in 1920 gave the League its first lesson in power politics. Three years later, Mussolini was able to follow the Polish precedent and to drive home the lesson that the League could give no security to small Powers unless some of the Greater powers identified their national interests with those of the League and of the threatened smaller Power. Once again the succession of events plainly point their own moral. For some time after the end of the 1914-18 War Albania's boundaries remained undefined. Eventually the Ambassadors' Conference appointed a commission for the purpose of settling them, and at the end of August, 1923, the Italian members of the Commission were ambushed on Greek territory and killed. Amongst them was General Tellini. The Italian Government, as it was entitled to do, held the Greek Government responsible, and presented a number of demands to which a reply within twenty-four hours was required. The note was dictatorial in form, and the fifth paragraph required Greece to pay Italy 50,000,000 lire within five days as compensation. Greece replied within the time specified, accepting four out of seven demands, but rejected three, including the demand for an indemnity. The Greek Government added, however, that if Italy was unwilling to accept her point of view she was prepared to appeal to the League and to abide by its decision. This reply was considered inadequate by Italy, who ignored the invitation to refer the matter to the League; the Italian fleet bombarded Corfu and subsequently Italian forces occupied the island. Meanwhile Greece had appealed to the League without mentioning the bombardment.

The subsequent history of the dispute shows the unsatisfactory shifts and expedients to which the League was already compelled to resort in such cases. No attempt was made to induce or compel Italy to evacuate Corfu

before the issue in dispute was discussed. This was due to the fact that Mussolini had plainly indicated that if the issue was left to the Ambassadors' Conference, he would evacuate Corfu as soon as the indemnity was paid, whereas if the League interfered he would stay there indefinitely. These were strange statements from the head of a member State, but Mussolini had already decided that the League could be defied, and history has proved his diagnosis justified. In spite of a bold speech by Viscount Cecil, the League Council tamely acquiesced in the situation, contenting itself with a discussion of the measure of Greek liability. Meantime the Ambassadors' Conference was doing the same thing, and when the recommendations of the League Council on this point were presented, they were first accepted, and then modified in circumstances which have given rise to the suspicion that the Ambassadors' Conference struck a bargain with Mussolini to evacuate Corfu in return for an increased indemnity. As a result, a powerful member had openly flouted the League, a dispute between two members had been settled outside the League, and the League had even failed to condemn the obviously unlawful conduct of Italy. For all practical purposes Italy ceased to operate in accordance with League principles after 1923, and her withdrawal in 1937 might well have been antedated by fourteen years. It would have at any rate saved the League some further humiliations.

Once again the observer wonders why no League settlement was possible in this case. The excuse commonly given was that the Conference of Ambassadors in fact settled the matter more quickly and smoothly than the League could have done. Such reasoning suggests that already in 1923 the practical ineffectiveness of the League was recognized, and that the older methods of diplomacy were preferable—and as yet the League was only four years old! The inference seems inescapable that

from the beginning the major Powers regarded the League merely as an instrument of national policy. If one examines the ulterior motives of the settlement, one finds a covert sympathy between Great Britain and Italy, recently rescued from Communism, and a coolness between Great Britain and France, due to the latter's recent occupation of the Ruhr. Even France on this occasion was lukewarm in her support of the League; for her own occupation of the Ruhr had been regarded by Great Britain as illegal, and awkward comparisons between that exploit and the Corfu incident could be, and, in fact, were made.

So far the violators of League principles had been ex-Allied Powers operating in Europe within a fairly narrow compass. The extent to which the desire for the preservation of international order had waned was revealed to the world in 1931 when Japan seized Manchuria. The conclusion of peace in 1919 had brought many disappointments for Japan. German rights in Shantung had been surrendered, but the Washington Conference prevented Japan from obtaining them. Meanwhile, the growth of Soviet influence in China provoked intense anxiety, more especially in view of the steadily increasing anti-Japanese attitude of Chinese nationalism. This was a problem of major importance for Japan, who obtained large supplies of raw materials and foodstuffs from China, and who looked hopefully to the eventual domination of the Chinese market. It was a problem which, prior to 1931, a strong League might have tackled in a generous and constructive spirit. Nothing was done, however, and in 1931, profiting from the acute economic distress of Great Britain and the United States, Japan made a forward move in Manchuria. Baldly stated, the Manchurian question from the standpoint of the League may be summarized as follows: In September, 1931, hostilities between Chinese and Japanese troops broke out at Mukden, and within a short time afterwards Japan had

overrun Manchuria. The Chinese Government took all possible steps to suppress provocative acts in China proper, and Chinese public opinion placed considerable faith in the strength of their case when it was presented to the League under Article 11 of the Covenant, according to which it is the 'friendly right' of any member to bring to the notice of the League any circumstance threatening international peace. The Council held several sessions (without public debate) and eventually it was decided to send the Lytton Commission (in which the United States had agreed to participate) to investigate the question on the spot. Before the Commission arrived, however, Japan had set up the puppet state of Manchukuo, thereby making a retreat by her impossible. Later, China appealed again to the League under Article 15 of the Covenant which provides for League jurisdiction over disputes between members likely to lead to a rupture (no declaration of war having been issued by either side). In accordance with this Article, the Council referred the dispute to the Assembly, which accepted the policy of the United States not to recognize any situation, treaty or agreement brought about by the use of force and contrary to existing international obligations. When the Lytton Commission reported, its findings were promptly denounced by Japan, which recognized Manchukuo and announced her intention of withdrawing from the League. Meanwhile the Lytton Report was submitted to the Council. It was divided into two parts, the first part being an analysis of past events and the second comprising recommendations for the settlement of the dispute. Since it was obvious that the League was not in a position to take effective action, there ensued a long wrangle over the first part of the report, at which both the Chinese and the Japanese representatives were present engaging in an acrimonious dispute. Finally, in February, 1933, the issue having been referred to the Assembly, that body drew up a report which in fact constituted a censure of

Japan, and then set up a Committee to examine the proposals contained in Chapters IX and X of the Report of the Lytton Commission. That Committee never even assembled, and beyond that the League made no attempt to settle the dispute, and the subsequent encroachment of Japan in Jehol and North China failed to evoke even a formal protest from the members of the League.

Lord Lytton has pointed out the folly of this irresolution. Had the facts of the Report been accepted, the League would have been spared the long dispute between the contestants, and since the Report carefully abstained from condemning Japan, it might still have been possible to secure Japan's co-operation in a settlement. However slender the possibility, it should have been tried. In Lord Lytton's words, 'the long delay in coming to agreement about the facts, first in the Council and subsequently in the Assembly, naturally led the Japanese to believe that a face-saving formula would eventually be adopted; if that was not intended, why the delay, because there never was any question of the League not accepting the findings of its Commission? The final result, therefore, was not only disappointing to Japan, but the form of the resolution was wounding to her national pride. In the circumstances she had no option but to resign from the League, and in doing so she had many sympathizers in other countries. Finally the fact that her resignation was accepted after the expiration of two years was equivalent to an exoneration by the Assembly of the very facts on account on which it had condemned her two years previously, since Article 1 of the Covenant provides that a State member may only withdraw from the League after two years' notice of its intention so to do, " provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal." Nothing, of course, can compel a nation to remain a member of the League of Nations against its will, but it can be prevented from resigning

if the conditions laid down in the Covenant have not been fulfilled. If, in the opinion of other members, a State has not fulfilled " all its international obligations and all its obligations under the Covenant " it can be " declared to be no longer a member of the League " under Article 16, par. 4. For the Assembly to pass a resolution in 1933 in effect declaring Japan had violated her obligations under the Covenant and then accept her resignation in 1935 was to stultify the League and to show the world that it could be successfully defied.'

Lord Lytton hardly goes far enough. Already in 1920 and in 1923 Poland and Italy had shown that the League could be successfully defied, and the Manchurian episode offered merely another instance that the League could not guarantee the territorial integrity of its members.

The conquest of Abyssinia by Italy leaves still less scope for discussion. There is evidence to show that Mussolini intended to annex it as early as 1931. Possibly the Japanese incursion into Manchuria was already pregnant with significance for the Fascist Grand Council. Preparations for the campaign were undertaken in the full blaze of publicity, and the Walwal incident may therefore be ignored. Italy subsequently admitted that she wantonly provoked war with a fellow member of the League with the intention of annexation, and all efforts at mediation were therefore brushed aside. When hostilities broke out Abyssinia appealed to the League, and Sir Samuel Hoare in an impressive speech at Geneva gave an authoritative enunciation of League principles. It seemed probable that at last the nadir of the League fortunes had been passed. This time the violation of League principles had surely been too direct. Disillusionment came swiftly, however. The notorious Hoare-Laval proposals of December, 1935, startled the public opinion of the world by proposing a dismemberment of a member of the League. For once, public opinion in both Great Britain and France expressed itself unequivocally in opposition

to this masterpiece of cynicism. Both Hoare and Laval were driven from office, but the real view of the British Cabinet as a whole could be deduced from Mr. Baldwin's speech of apology to Parliament and from the subsequent return to office of Sir Samuel Hoare shortly afterwards.

At the moment, however, the British people had not only condemned Sir Samuel Hoare, it had also unmistakably expressed its desire to see Mr. Eden appointed as his successor, and that wish at least was gratified. Mr. Eden was generally regarded as possessing a genuine desire for effective League action, and that desire was shortly afterwards satisfied by the decision of the League to impose economic sanctions upon Italy. A detached observer would perhaps notice that since Italy's army of invasion had now for the most part passed through the Suez Canal, there was necessarily a cessation of the abnormal dues which had been extracted by the shareholders during the period of preparation. He might also notice that the Italian invasion was proceeding much more quickly than the European experts had believed possible, and the threat to Egypt and the route to India of an Abyssinia entirely under Italian domination was unmistakable. Already an important concentration of British warships in the Mediterranean had occurred, and the Italian attitude had become so menacing that they had been removed from Malta to Alexandria. Previously, Mr. Baldwin had committed himself to the proposition that 'sanctions mean war'—a deduction justifiable by the course which events were taking. Accordingly, the scope of the embargo on exports to Italy was limited so as to exclude oil. Lack of this commodity must necessarily have crippled the Italian invasion of Abyssinia; closure of the Suez Canal would have been its deathblow. Even if, in desperation, Italy had declared war, her position would have been hopeless; for Great Britain had secured guarantees from the Mediterranean League members that their harbours would

be available for the British fleet. Why, in the circumstances, the Mediterranean was not sealed at both ends, and the aggressor left to her fate, has never been explained. This was probably the last moment when collective security could have been realized. Why was this chance deliberately thrown away by Great Britain when the League's policy coincided with her national interests, and when France had at last been reluctantly dragged in the wake of British policy?

Whatever the reason, for the time being the independence of Abyssinia was extinguished and the worst fears of the smaller States were realized. Membership of the League, from a coveted right, had become a liability. It exposed them to the wrath of powerful international bandits and offered no corresponding advantages. Rearmament became general, defensive alliances were hastily renewed, and new ones were concluded. The League was moribund.

There is no need to trace in detail the later states of the League's disintegration. The Spanish War and the Sino-Japanese War which began in 1937 both emphasized the collapse of the League machinery. The year 1938 made it plain that another World War was inevitable if the ever-increasing demands of the Fascist Powers were to be resisted. All the hopes to which expression had been given in 1919 were dead. The League had foundered on the rock of national sovereignty, and until the hard lesson was learned that there can be no compromise between national sovereignty and international order, no further progress was possible.

THE PROBLEM TO-DAY

Now that the Second World War has ended, the human race enjoys a second chance to organize an enduring system of international order, and a new and terrifying urgency has been given to the problem by the invention of atomic weapons. Henceforth war between major

Powers threatens human existence itself. We are on the threshold of an age in which successive inventions can make the continuance of life on this planet an impossibility. In such circumstances the only possible goal of human endeavour has become the establishment of a world order which will make the prosecution of national antagonisms by means of warfare an impossibility. Thus, the task is at once greater and more urgent than it was in 1919. At the conclusion of the First World War, it was still possible to think of States progressively learning law-abiding habits, and so strengthening the links which bound them together. To-day, the choice is between a third, and greater, world conflict in which, if humanity survives, it will almost certainly be organized within a single, conquering, all-powerful State and a final, and successful, attempt to organize effective world government by surrender of the necessary powers by each independent State. In either case, the conception of national sovereignty, as it existed in 1939, is obsolete. Either States retain their freedom to make war or they surrender it. If they surrender it, it matters little whether they are still styled "sovereign" States or not. They certainly will not be independent, and equally certainly, they will not be sovereign in the Austinian sense of the term, for they will be habitually subject to a higher authority in several of their most important functions.

The magnitude of the change is so great that, as yet, the ordinary citizen has not grasped it, any more than he has grasped the terrifying destructive qualities of the atomic bomb, and similar methods of waging war. Yet the resulting revolution in human existence will be greater than that which followed the collapse of the Roman Empire or which followed the Industrial Revolution. The atomic age is upon us and will have the most far-reaching effects upon every aspect of human society. It makes the pursuit of conflicting foreign policies by individual nations a matter of immediate concern to

every human being; for the survival of individuals anywhere is involved in the outbreak of another world war. If the progress of modern invention should lead powers of the first rank to concentrate upon their own individual security by striving to retain a monopoly of these new instruments of devastation, then nothing can be more certain than that we are about to enter upon a deadlier armaments race than any which the world has so far seen. In Great Britain, at any rate, it would seem that the present position is plainly perceived; for during a memorable debate on foreign affairs in the House of Commons during November, 1945, Mr. Eden pointed out that traditional views of national sovereignty were now completely obsolete, whilst Mr. Bevin went a good deal further, and made the most striking and courageous contribution towards the solution of the problem which any responsible Minister in any country has so far made. After pointing out that before the War of 1939-45 he had supported M. Briand's scheme of a United States of Europe as a step along the road to world unity, he added:

'(Mr. Eden) said there must be established a rule of law. The law must derive its power and observance from a definite source, and in studying this problem I am driven to ask, "Will law be observed if it is arrived at only by treaty and promises and decisions as at present arranged?" In all the years this has broken down so often. I trust it will not break down again, but if it is not to break down again, I think it must lead us still farther on. In other words, will the peoples feel that it is their law if that law is derived and enforced by the adoption of past methods, whether the League of Nations or the Concert of Europe, or anything of that kind?

'The illustration was drawn of the constitution of the United Kingdom, which took many years to establish. Where does the power to make law actually rest? It is

not even this House, it is certainly not the executive; it is the votes of the people—they are the sovereign authority. It may be interesting to call attention to the development of the United States of America. Originally, when the States came together, they met as States with separate governments, but they soon discovered that they had little or no power to enforce their decisions, and it is the enforcement of the decision that is the real difficulty in world law, or any law. It is the sanction. They then decided, for the purpose of conducting foreign affairs, taxation for defence and federal purposes, for the regulation of commerce, that they would create a federal body and in that body there would be direct representation of the people, not through the thirteen states, but direct from the people to the federal Parliament of the country. So from the outset the United States drew its power to make laws directly from the people.

'In South Africa, to get peace and development there had to be a federal Parliament, and it had to rest on the votes of the people direct to that Parliament. We have benefited at any rate from that great decision on two great occasions, because that great country had the foresight to build up on the votes of the people. Australia built up the Federal Parliament on the same lines. . . .

'Therefore, when you turn from all the things you have built up—the League of Nations, or your constitutions—I feel we are driven relentlessly along this road: the necessity of a new study for the purpose of creating a world assembly, elected directly from the people of the world as a whole, for whom the Governments who form the United Nations are responsible and who, in fact, make the world law which they, the people, will then accept, and be morally bound and willing to carry it out. For it will be by their votes that the power will have been derived, and the taxation provided, and it will be for their direct representatives to carry it out.

'You may invent all sorts of devices to decide who is

an aggressor but, after all the thought you can give it, the only repository of faith I have been able to find to determine that is the common people. There has never been a war yet which, if the facts had been put calmly before the ordinary folk, could not have been prevented. The fact is they are kept separated.

' The common man, I think, is the great protection against war. The supreme act of government is, after all, the horrible duty of deciding matters which affect the life or death of the people. That rests in this House as far as this country is concerned. I would merge that power into a great power of a directly elected world assembly, in order that the great repositories of destruction and science on the one side may be their property to protect us against its use; and, on the other hand, it could easily determine in the ordinary sense whether a country was going to act as an aggressor or not.

" I am willing to sit with anybody, of any party, of any nation, to try to devise either a franchise or a constitution—just as other great countries have done—for a world assembly with a limited objective—the objective of peace. Once you can get to that stage I believe we shall have taken a great progressive step, but, in the meantime, there must be no weakening of the institution which was built in San Francisco. It must be the prelude to further development. This must not be considered a substitution but rather a completion or a development of it, in order that the benefit of the experience and administration derived from that institution may be carried to its final end.

' From the moment you accept that one other phrase goes, and that is " international law." That phrase presupposes conflict between nations. It would be substituted by " world law," with a moral world force behind it, rather than a law built upon case made law and on agreements. It would be a world law, with a world judiciary to interpret it, with a world police to enforce it,

with the decision of the people with their own votes, resting in their own hands, irrespective of race or creed, as the great world sovereign elected authority which would hold in its care the destinies of the people of the world.'

It will be seen how accurately this great speech draws the necessary conclusions from the history of international law, and from the failure of the League experiment. To-day, there is no halfway house between anarchy and world order, and the United Nations Organization is not a solution of the world's problem, but merely a step towards its solution.

In a speech at Ottawa on December 17th, 1945, Mr. Mackenzie King closely echoed the conclusions reached by Mr. Bevin in the House of Commons a month earlier. Mr. King agreed that there must be instituted some form of world government, restricted at first to the prevention of war and the maintenance of international security. He, too, was of opinion that the Charter of the United Nations was an insufficient answer to the problems with which we were now confronted, although it could be regarded as a first step towards their solution. 'If we are agreed,' he declared, 'on the ultimate necessity of some measure of world Government, we should by every means in our power support and strengthen every agency of international co-operation and understanding that can help to make the world community a reality. The peoples of all nations must address themselves to the task of helping to devise institutions and relationships that will enable mankind to ensure, if not its salvation, at least its survival. We must work with all our might for a world under a rule of law. Humanity is one. We must act in the belief that no nation and no individual liveth to himself alone, and that all are members of one another.'

Thus, the atomic bomb has transferred the root problem of national sovereignty from the study into the

legislative chamber, and the lead in this great forward movement has been taken by two of the foremost statesmen of the British Commonwealth. There is to-day no dispute, either over the nature of the problem, or of the measures necessary for its solution. There must be merged in a world government that part of the sovereignty of every State which entails control over weapons of war and the conduct of its foreign policy. We must contemplate nothing less than the establishment of a world legislature, directly responsible to the peoples of the world, a world police, a world judiciary—and a world law. To this, the experience of two world wars and the incredible speed of scientific invention have left us no alternative. And the time in which these changes must be achieved is short.

It must not be concluded, however, that the success or failure of experiments in international government simply, or even primarily, depends on the constitutional structure adopted. The British constitution is the most formless and flexible structure which the modern world has seen, but it is also one of the most successful, if not the most successful. On the other hand, none of the constitutions evolved in Central and Eastern Europe after the First World War, and constructed with great elaboration, have survived the Second World War, and—what is perhaps more significant—few of them had survived the stresses and strains of the inter-war period by the year 1939.

There is no special virtue in legal or political forms, considered apart from their content. The effectiveness of a constitution, as of a single law, is determined by a number of factors, of which its form and the force which is available to apply it are only two of many determining factors. When the United States adopted the Prohibition Amendment, its form was clear, and the whole force of the United States was available for its enforcement. Yet the law was not successfully enforced,

and the complete failure to make it effective led to its repeal. Similarly, the whole of British power was unable to enforce the British rule in Ireland at the conclusion of the First World War, when British power was greater, and British prestige was higher, than they had ever been before. These two examples are sufficient to show that a law or a constitution which has no roots in popular approval, or at least acquiescence, cannot in the last resort be an effective instrument of social control. On the other hand, if the will to work them is present, even imperfect, cumbrous or defective rules can be used, and can be gradually adapted to become more effective for their purpose. Any English lawyer is familiar with the process whereby the complicated and imperfect English law of real property, framed under feudal conditions long obsolete, has gradually been adapted and modified to meet the needs of a different age.

The League of Nations failed, not merely because of defective form, but for more fundamental reasons. The will to make it an effective instrument of international peace was not present. Similarly, it is easy to classify the United Nations' Organization, but the question whether it will work depends, not upon its form, but upon the answer to the question whether its members intend to work it. If they do, then it will in due course evolve machinery to make it effective, and no defects of form will be permitted to stand in its way. Moreover, it may well be that if it develops it will do so in ways quite different from those contemplated at the outset of its activities. This is always happening to political institutions, and none illustrates this thesis so well as the British constitution, which in century after century succeeds in adapting itself to the changing conditions and outlook of the British people. It is for this reason that British people prefer to leave so much of the field of political relations undefined, and the method works because, over a period of many centuries, there has been a continuing resolve on

their part to preserve their political institutions as an effective framework of social life. The difficulties involved in departing from that attitude were apparent during the brief period of the Commonwealth, when numerous new constitutional experiments were attempted with conspicuous lack of success.

Ultimately, therefore, in all considerations of international law and international order, we come to one final problem, which can be defined but not solved by *a priori* reasoning. It is possible to define the various types of organization which are available for the purpose of abolishing war, and it is possible to say that, in theory, some are better than others. But it must be added that the process of constitution-making is, *of itself*, not nearly so difficult as it has sometimes been represented. It becomes so because of extraneous factors, such as national interests or political ideologies. On the other hand, the most perfect institutions which the wit of man can devise have no *inherent* effectiveness. Their value depends entirely upon the development of a common determination to make them work—a determination which was not present, or which, if it was present, was not sufficiently strong after the First World War, in spite of the almost universal mood of popular idealism which accompanied the establishment of the League of Nations.

This time, nothing at all comparable to that wave of emotional enthusiasm has accompanied the establishment of the United Nations' Organization. There has been a general absence of claims that it is a final answer to the problems which afflict mankind in the twentieth century. On the contrary, the establishment of the Organization has been regarded merely as one of the many important contributions towards the settlement of world problems. This attitude of scepticism is wise. It is based upon the unhappy experience during the period between the two World Wars and upon recognition of the tremendous com-

plexity of modern international problems and of the bitter hatreds which have been bred in six years of destructive and relentless warfare. This mood is sound, as long as it is coupled with determination to use all possible means of averting a final catastrophe, such as a third world war would be. But it also implies that the United Nations' Organization is no more than a means to an end, and that the process of achieving that end will be difficult. The new organization can only be regarded as machinery through which nations can build up the habit of co-operation for the peaceful development of the earth; but the habit of co-operation itself involves a change in national attitudes towards world problems, and in the last resort changed national attitudes involve corresponding changes in individual attitudes towards world problems.

That change can be variously defined. A priest would describe it as a change of heart, and a Christian priest would go further and speak of the application of Christian principles to the world's ills. An economist would speak of the evolution of a world economy in place of the conflicting national economies of to-day. The lawyer would describe the problem as the substitution of world government under the rule of law for the competitive national sovereignties which are responsible for world wars, or the Marxist might speak of the world commonwealth of socialist States. Yet all these approaches have the same end in view, though the manner in which it is described will vary. In addition, another feature is common to all these patterns of planning a world community: the process by which the desired end is achieved is an educational process—undoubtedly the most difficult educational process which has ever been undertaken. But unless it is undertaken now, a great opportunity will be missed, and there will be little hope for the realization of the rule of law in world affairs.

SUGGESTED READINGS

AUSTIN, J. *Lectures on Jurisprudence.* 1873.
BARLOW, K. E. *The Discipline of Peace.* 1942.
BENNETT, D. *Freedom from War.* 1945.
BEVERIDGE, SIR WILLIAM. *The Price of Peace.* 1945.
BODIN, J. *Les six livres de la république.* 1576.
BUTLER, N. M. *The Family of Nations.* 1938.
CARR, E. H. *Conditions of Peace.* 1942.
CHANING-PEARCE, M. (Editor). *Federal Union.* 1940.
COATMAN, J. *Magna Britannia.* 1936.
COBBAN, A. *The Crisis of Civilization.* 1941.
CURTIS, L. *World War, Its Cause and Cure.* 1945.
DUGUIT, L. *Souveraineté et Liberté.* 1922.
FAWCETT, C. B. *The Bases of a World Commonwealth.* 1941.
FRIEDMANN, W. *Legal Theory.* 1944.
JENNINGS, W. *Federation of Western Europe.* 1940.
KEETON, G. W. (Editor). *The Path to Peace: A Debate.* 1945.
——*National Sovereignty and International Order.* 1939.
KELSEN, H. *Das Problem der Souveraenitaet und die Theorie des Voelkerrechts.* 1920.
LASKI, H. J. *Foundations of Sovereignty.* 1921.
LYTTON, LORD. *The Lessons of the League of Nations Commission of Enquiry in Manchuria.* ('*The New Commonwealth Quarterly*,' 1937.)
MITRANY, D. A. *A Working Peace System.* 1943.
POLLOCK, SIR FREDERICK. *The League of Nations.* 1922.
SCHWARZENBERGER, G. *Power Politics.* 1941. (Chapters 4, 22, and Part Three.)
SHOTWELL, O. T. *The Great Decision.* 1944.
STONE, J. *The Atlantic Charter.* 1943.
STREIT, C. *Union Now.* 1939.
——*Union Now with Britain.* 1941.
WELLES, S. *The Time for Decision.* 1944.

APPENDIX I

THE CHARTER OF THE UNITED NATIONS
(June 26th, 1945)

WE, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

and for these ends

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the City of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter I.—Purposes and Principles

Article 1

The Purposes of the United Nations are:—

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles :—

1. The Organization is based on the principle of the sovereign equality of all its members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Chapter II.—Membership

Article 3

The original members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1st, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendations of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

Chapter III.—Organs

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

Chapter IV.—The General Assembly—Composition

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph two, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question, on which action is necessary, shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

(*a*) Promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

(*b*) Promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (*b*) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraphs 1 (*c*) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may

require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

Chapter V.—The Security Council—Composition

Article 23

1. The Security Council shall consist of 11 Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural

matters shall be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Procedure

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute.

The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations.

CHAPTER VI.—PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or of the general Assembly.

2. A State which is not a Member of the United Nations may bring to the attention of the Security Council or of

the General Assembly any dispute to which it is a party, if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33-37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

Chapter VII—Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action

may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory States in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for

their combined action shall be determined, within tl limits laid down in the special agreement or agreemen referred to in Article 43 by the Security Council with tl assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be mac by the Security Council with the assistance of the Militar Staff Committee.

Article 47

1. There shall be established a Military Staff Con mittee to advise and assist the Security Council on a questions relating to the Security Council's militar requirements for the maintenance of international peac and security, the employment and command of force placed at its disposal, the regulation of armaments, an possible disarmament.

2. The Military Staff Committee shall consist of th Chiefs of Staff of the permanent members of the Securit Council or their representatives. Any Member of th United Nations not permanently represented on th Committee shall be invited by the Committee to b associated with it when the efficient discharge of th Committee's responsibilities requires the participation o that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction o any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international

peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations of not, which finds itself confronted with special economic problems arising from the carrying out of those measures, shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Chapter VIII.—Regional Arrangements

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements, or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy State, as defined in Paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such State, until such time as the Organization may, on request of the governments concerned, be charged with the responsibility for preventing further aggression by such a State.

2. The term enemy State as used in paragraph 1 of this Article applies to any State which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Chapter IX.—International Economic and Social Co-operation

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:—

(*a*) Higher standards of living, full employment, and conditions of economic and social progress and development;

(*b*) solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and

(*c*) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instru-

ments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X.—THE ECONOMIC AND SOCIAL COUNCIL—COMPOSITION

Article 61

1. The Economic and Social Council shall consist of 18 Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election, 18 members of the Economic and Social Council shall be chosen, the term of office of

six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international, economic, social, cultural, educational, health and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

VOTING

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.

Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Chapter XI.—Declaration Regarding Non-Self-Governing Territories

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end:—

(*a*) To ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment, and their protection against abuses;

(*b*) To develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(*c*) To further international peace and security;

(*d*) To promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article; and

(*e*) To transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and

educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic and commercial matters.

Chapter XII.—International Trusteeship System

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be :—

(*a*) To further international peace and security;

(*b*) To promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement;

(*c*) To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

(*d*) To ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:—

(*a*) Territories now held under mandate;

(*b*) Territories which may be detached from enemy States as a result of the Second World War; and

(*c*) Territories voluntarily placed under the system by States responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the mandatory power in the case of

territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79 and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more States or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII.—THE TRUSTEESHIP COUNCIL—COMPOSITION

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:—

(*a*) Those Members administering trust territories;

(*b*) Such of those members mentioned by name in

Article 23 as are not administering trust territories; and

(*c*) As many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

(*a*) Consider reports submitted by the administering authority;

(*b*) Accept petitions and examine them in consultation with the administering authority;

(*c*) Provide for periodic visits to the respective Trust Territories at times agreed upon with the administering authority; and

(*d*) Take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a *questionnaire* on the political, economic, social and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such *questionnaire.*

VOTING

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules and procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV.—THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International

Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

Chapter XV.—The Secretariat

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security

Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials, responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

Chapter XVI.—Miscellaneous Provisions

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly

enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

Chapter XVII.—Transitional Security Arrangements

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30th October, 1943, and France shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any State which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

Chapter XVIII.—Amendments

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with

their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

Chapter XIX.—Ratification and Signature

Article 110

1. The present Charter shall be ratified by the signatory States in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the Signatory States of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory States.

4. The States signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory States.

In faith whereof the representatives of the Governments of the United Nations* have signed the present Charters.

Done at the City of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

**Note.*—Representatives of the following Governments signed the Charter:—

Argentina.	Costa Rica.
Australia.	Cuba.
Belgium.	Czechoslovakia.
Bolivia.	Denmark.
Brazil.	Dominican Republic.
Byelo-Russian S.S.R.	Ecuador.
Canada.	Egypt.
China.	El Salvador.
Colombia.	Ethiopia.

France.
Greece.
Guatemala.
Haiti.
Honduras.
India.
Iran.
Iraq.
Lebanon.
Liberia.
Luxembourg.
Mexico.
Netherlands.
New Zealand.
Nicaragua.
Norway.
Panama
Paraguay.
Peru.
Philippine Commonwealth.
Saudi Arabia.
Syria.
Turkey.
Ukrainian S.S.R.
Union of South Africa.
Union of Soviet Socialist Republics.
United Kingdom of Great Britain and Northern Ireland.
Uruguay.
Venezuela.
Yugoslavia.
United States of America.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

(June 26th, 1945)

Article 1

THE International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I.—ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consists of fifteen members, no two of whom may be nationals of the same State.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a State which is party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the States which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

1. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same State obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge

their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Artcle 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and durations of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed

by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may

proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3 and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20 and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and

the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

Chapter II—Competence of the Court

Article 34

1. Only States may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the

expenses of the Court. This provision shall not app if such State is bearing a share of the expenses of tl Court.

Article 36

1. The jurisdiction of the Court comprises all cas which the parties refer to it and all matters special provided for in the Charter of the United Nations or treaties or conventions in force.

2. The States parties to the present Statute may at a time declare that they recognise as compulsory, *ipso fa* and without special agreement, in relation to any oth State accepting the same obligation, the jurisdiction the Court in all legal disputes concerning:—

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

(*c*) The existence of any fact which, if establishe would constitute a breach of an interna tion obligation;

(*d*) The nature or extent of the reparation to made for the breach of an international obligatio

3. The declarations referred to above may be ma unconditionally or on condition of reciprocity on t part of several or certain States, or for a certain time

4. Such declarations shall be deposited with t Secretary-General of the United Nations, who sh transmit copies thereof to the parties to the Statute a to the Registrar of the Court.

5. Declarations made under Article 36 of the Statu of the Permanent Court of International Justice a which are still in force shall be deemed, as between t parties to the present Statute, to be acceptances of t compulsory jurisdiction of the International Court Justice for the period which they still have to run a in accordance with their terms.

6. In the event of a dispute as to whether the Co has jurisdiction, the matter shall be settled by the d cision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the Legaue of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:—

(*a*) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(*b*) International custom, as evidence of a general practice accepted as law;

(*c*) The general principles of law recognised by civilised nations;

(*d*) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Chapter III—Procedure

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other States entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the State upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

1. Minutes shall be made at each hearing, and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual body, bureau, commission, or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend his case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37 but also that the claim is well founded in fact and law.

Article 54

1, When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open for revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decided upon this request.

Article 63

1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

2. Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

Chapter IV—Advisory Opinions

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any State entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such State entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such State may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment

on the statements made by other States or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to States and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other States and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V—AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of States which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

AGREEMENT FOR UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION

(November 9th, 1943)

The Governments or Authorities whose duly authorized representatives have subscribed hereto,

Being United Nations or being associated with the United Nations in this war,

Being determined that immediately upon the liberation of any area by the armed forces of the United Nations or as a consequence of retreat of the enemy the population thereof shall receive aid and relief from their sufferings, food, clothing and shelter, aid in the prevention of pestilence and in the recovery of the health of the people, and that preparation and arrangements shall be made for the return of prisoners and exiles to their homes and for assistance in the resumption of urgently needed agricultural and industrial production and the restoration of essential services,

Have agreed as follows:—

Article I

There is hereby established the United Nations Relief and Rehabilitation Administration.

1. The Administration shall have power to acquire, hold and convey property, to enter into contracts and undertake obligations, to designate or create agencies and to review the activities of agencies so created, to manage undertakings and in general to perform any legal act appropriate to its objects and purposes.

2. Subject to the provisions of Article VII, the purposes and function of the Administration shall be as follows:—

(*a*) To plan, co-ordinate, administer or arrange for the administration of measures for the relief of

victims of war in any area under the control of any of the United Nations through the provision of food, fuel, clothing, shelter and other basic necessities, medical and other essential services; and to facilitate in such areas, so far as necessary to the adequate provision of relief, the production and transportation of these articles and the furnishing of these services. The form of activities of the Administration within the territory of a member Government wherein that Government exercises administrative authority and the responsibility to be assumed by the member Government for carrying out measures planned by the Administration therein shall be determined after consultation with and with the consent of the member Government.

(*b*) To formulate and recommend measures for individual or joint action by any or all of the member Governments for the co-ordination of purchasing, the use of ships and other procurement activities in the period following the cessation of hostilities, with a view to integrating the plans and activities of the Administration with the total movement of supplies, and for the purpose of achieving an equitable distribution of available supplies. The Administration may administer such co-ordination measures as may be authorised by the member Governments concerned.

(*c*) To study, formulate and recommend for individual or joint action by any or all of the member Governments measures with respect to such related matters, arising out of its experience in planning and performing the work of relief and rehabilitation, as may be proposed by any of the member Governments. Such proposals shall be studied and recommendations formulated if the proposals are supported by a vote of the Council,

and the recommendations shall be referred any or all of the member Governments f individual or joint action if approved by una mous vote of the Central Committee and vote of the Council.

Article 2

MEMBERSHIP

The members of the United Nations Relief and R habilitation Administration shall be the Governme or Authorities signatory hereto and such other Gove ments or Authorities as may upon application for me bership be admitted thereto by action of the Counc The Council may, if it desires, authorize the Cent Committee to accept new members between sessions the Council.

Wherever the term 'member Government' is us in this agreement it shall be construed to mean a memb of the Administration, whether a Government or authority.

Article 3

THE COUNCIL

1. Each member Government shall name one rep sentative, and such alternates as may be necessa upon the Council of the United Nations Relief a Rehabilitation Administration, which shall be the polic making body of the Administration. The Coun shall, for each of its sessions, select one of its memb to preside at the session. The Council shall determi its own rules of procedure. Unless otherwise provid by the agreement or by action of the Council, the Coun shall vote by simple majority.

2. The Council shall be convened in regular sessi not less than twice a year by the Central Committ It may be convened in special session whenever t Central Committee shall deem necessary, and shall

convened within thirty days after request therefor by one-third of the members of the Council.

3. The Central Committee of the Council shall consist of the representatives of China, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, with the Director-General presiding without vote. Between sessions of the Council it shall when necessary make policy decisions of an emergency nature. All such decisions shall be recorded in the minutes of the Central Committee which shall be communicated promptly to each member Government. Such decisions shall be open to reconsideration by the Council at any regular session or at any special session called in accordance with Article 3, paragraph 2. The Central Committee shall invite the participation of the representative of any member Government at those of its meetings at which action of special interest to such Government is discussed. It shall invite the participation of the representative serving as chairman of the Committee on Supplies of the Council at those of its meetings at which policies affecting the provision of supplies are discussed.

4. The Committee on Supplies of the Council shall consist of the members of the Council, or their alternates, representing those member Governments likely to be principal suppliers of materials for relief and rehabilitation. The members shall be appointed by the Council, and the Council may authorize the Central Committee to make emergency appointments between sessions of the Council, such appointments to continue until the next session of the Council. The Committee on Supplies shall consider, formulate and recommend to the Council and the Central Committee policies designed to assure the provision of required supplies. The Central Committee shall from time to time meet with the Committee on Supplies to review policy matters affecting supplies.

5. The Committee of the Council for Europe shall

consist of all the members of the Council, or their alternates, representing member Governments of territories within the European area, and such other members of the Council, representing other Governments directly concerned with the problems of relief and rehabilitation in the European area, as shall be appointed by the Council; the Council may authorize the Central Committee to make these appointments in cases of emergency between sessions of the Council, such appointments to continue until the next session of the Council. The Committee of the Council for the Far East shall consist of all the members of the Council, or their alternates representing member Governments of territories within the Far Eastern area, and such other members of the Council representing other Governments directly concerned with the problems of relief and rehabilitation in the Far Eastern area as shall be appointed by the Council; the Council may authorize the Central Committee to make these appointments in cases of emergency between sessions of the Council, such appointments to continue until the next session of the Council. The regional committees shall normally meet within their respective areas. They shall consider and recommend to the Council and the Central Committee policies with respect to relief and rehabilitation within their respective areas. The Committee of the Council for Europe shall replace the Inter-Allied Committee on European post-war relief established in London on September 24th, 1941, and the records of the latter shall be made available to the committee for Europe.

6. The Council shall establish such other standing regional committees as it shall consider desirable, the functions of such committees and the method of appointing their members being identical to that provided in Article 3, paragraph 5, with respect to the committees of the Council for Europe and for the Far East.

The Council shall also establish such other standing committees as it considers desirable to advise it, and, in intervals between sessions of the Council, to advise the Central Committee. For such standing technical committees as may be established, in respect of particular problems such as nutrition, health, agriculture, transport, repatriation and finance, the members may be members of the Council or alternates nominated by them because of special competence in their respective fields of work. The members shall be appointed by the Council, and the Council may authorize the Central Committee to make emergency appointments between sessions of the Council, such appointments to continue until the next session of the Council. Should a regional committee so desire, sub-committees of the standing technical committees shall be established by the technical committees in consultation with the regional committees, to advise the regional committees.

7. The travel and other expenses of members of the Council and of members of its committees shall be borne by the Governments which they represent.

8. All reports and recommendations of committees of the Council shall be transmitted to the Director-General for distribution to the Council and the Central Committee by the secretariat of the Council established under the provisions of Article 4, pargraph 4.

Article 4

THE DIRECTOR-GENERAL

1. The executive authority of the United Nations Relief and Rehabilitation Administration shall be in the Director-General, who shall be appointed by the Council on the nomination by unanimous vote of the Central Committee. The Director-General may be removed by the Council on recommendation, by unanimous vote, of the Central Committee.

2. The Director-General shall have full power and

authority for carrying out relief operations contemplated by Article 1, paragraph 2 (*a*), within the limits of available resources and the broad policies determined by the Council or its Central Committee. Immediately upon taking office he shall, in conjunction with the military and other appropriate authorities of the United Nations, prepare plans for the emergency relief of the civilian population in any area occupied by the armed forces of any of the United Nations, arrange for the procurement and assembly of the necessary supplies and create or select the emergency organization required for this purpose. In arranging for the procurement, transportation and distribution of supplies and services, he and his representatives shall consult and collaborate with the appropriate authorities of the United Nations and shall, wherever practicable, use the facilities made available by such authorities. Foreign voluntary relief agencies may not engage in activity in any area receiving relief from the Administration without the consent and unless subject to the regulation of the Director-General. The powers and duties of the Director-General are subject to the limitations of Article 7.

3. The Director-General shall also be responsible for the organization and direction of the functions contemplated by Article 1, paragraphs 2 (*b*) and 2 (*c*).

4. The Director-General shall appoint such Deputy Directors-General, officers, expert personnel, and staff at his headquarters and elsewhere, including field missions, as he shall find necessary, and he may delegate to them such of his powers as he may deem appropriate. The Director-General, or upon his authorization the Deputy Directors-General, shall supply such secretariat and other staff and facilities as shall be required by the Council and its committees, including the regional committees and sub-committees. Such Deputy Directors-General as shall be assigned special functions within a region shall attend meetings of the regional standing committee

whenever possible and shall keep it advised on the progress of the relief and rehabilitation programme within the region.

5. The Director-General shall make periodic reports to the Central Committee and to the Council covering the progress of the Administration's activities. The reports shall be made public except for such portions as the Central Committee may consider it necessary, in the interests of the United Nations, to keep confidential; if a report affects the interests of a member Government in such a way as to render it questionable whether it should be published, such Government shall have an opportunity of expressing its views on the question of publication. The Director-General shall also arrange to have prepared periodic reports covering the activities of the Administration within each region and he shall transmit such reports with his comments to the Council, the Central Committee and the respective regional committees.

Article 5

Supplies and Resources

1. In so far as its appropriate constitutional bodies shall authorize, each member Government will contribute to the support of the Administration in order to accomplish the purposes of Article 1, paragraph 2 (*a*). The amount and character of the contributions of each member Government under this provision will be determined from time to time by its appropriate constitutional bodies. All such contributions received by the Administration shall be accounted for.

2. The supplies and resources made available by the member Governments shall be kept in review in relation to prospective requirements by the Director-General, who shall initiate action with the member Governments with a view to assuring such additional supplies and resources as may be required.

3. All purchases by any of the member Governments, to be made outside their own territories during the war for relief or rehabilitation purposes, shall be made only after consultation with the Director-General, and shall, so far as practicable, be carried out through the appropriate United Nations agency.

Article 6

ADMINISTRATIVE EXPENSES

The Director-General shall submit to the Council an annual budget, and from time to time such supplementary budgets as may be required, covering the necessary administrative expenses of the Administration. Upon approval of a budget by the Council the total amount approved shall be allocated to the member Governments in proportions to be determined by the Council. Each member Government undertakes, subject to the requirements of its constitutional procedure, to contribute to the Administration promptly its share of the administrative expenses so determined.

Article 7

Notwithstanding any other provision herein contained, while hostilities or other military necessities exist in any area, the Administration and its Director-General shall not undertake activities therein without the consent of the military command of that area, and unless subject to such control as the command may find necessary. The determination that such hostilities or military necessities exist in any area shall be made by its military commander.

Article 8

AMENDMENT

The provisions of this agreement may be amended as follows:—

(*a*) Amendments involving new obligations for member Governments shall require the approval of the Council by a two-thirds vote and shall take

effect for each member Government on acceptance by it;

(*b*) Amendments involving modification of Article 3 or Article 4 shall take effect on adoption by the Council by a two-thirds vote, including the votes of all the members of the Central Committee ;

(*c*) Other amendments shall take effect on adoption by the Council by a two-thirds vote.

Article 9

ENTRY INTO FORCE

This agreement shall enter into force with respect to each signatory on the date when the agreement is signed by that signatory, unless otherwise specified by such signatory.

Article 10

WITHDRAWAL

Any member Government may give notice of withdrawal from the Administration at any time after the expiration of six months from the entry into force of the agreement for that Government. Such notice shall take effect twelve months after the date of its communication to the Director-General subject to the member Government having met by that time all financial, supply or other material obligations accepted or undertaken by it.

APPENDIX 4

THE ATLANTIC CHARTER

(August 14th, 1941)

The President of the United States and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries, seek no aggrandizement, territorial or other.

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.

Third, they respect the right of all peoples to choose the form of Government under which they live and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

Fourth, they will endeavour, with due respect for their existing obligations, to further enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity.

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field, with the object of securing for all improved labour standards, economic advancement, and social security.

Sixth, after the final destruction of Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance.

Eighth, they believe all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmanent of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armament.

Resolution adopted at a meeting of representatives of the Allied Governments at a Conference held at St. James's Palace, London, on September 24th, 1941

The Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, the U.S.S.R. and Yugoslavia, and representatives of General de Gaulle, leader of Free Frenchmen, having taken note of the Declaration recently drawn up by the President of the United States and by the Prime Minister, Mr. Churchill, on behalf of H.M. Government in the United Kingdom, now make known their adherence to the common principles of policy set forth in that Declaration and their intention to co-operate to the best of their ability in giving effect to them.

APPENDIX 5

THE DECLARATION OF PHILADELPHIA CONCERNING THE AIMS AND PURPOSES OF THE INTERNATIONAL LABOUR ORGANIZATION

(Adopted at the International Labour Conference, May 10th, 1944)

The General Conference of the International Labour Organization, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts this 10th day of May, in the year nineteen hundred and fourty-four, the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members.

I

The Conference reaffirms the fundamental principles on which the Organization is based, and, in particular, that:

(*a*) labour is not a commodity;

(*b*) freedom of expression and of association are essential to sustained progress;

(*c*) poverty anywhere constitutes a danger to prosperity everywhere;

(*d*) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussion and democratic decision with a view to promotion of the common welfare.

II

Believing that experience has fully demonstrated the truth of the statement in the Preamble to the Con-

stitution of the International Labour Organization, that lasting peace can be established only if it is based on social justice, the Conference affirms that :

(*a*) all human beings, irrespective of trade, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;

(*b*) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;

(*c*) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;

(*d*) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;

(*e*) in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

III

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

(*a*) full employment and the raising of standards of living;

(*b*) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments

and make their greatest contribution to the common well-being;

(*c*) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

(*d*) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(*e*) the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(*f*) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(*g*) adequate protection for the life and health of the workers in all occupations;

(*h*) provision for child welfare and maternity protection;

(*i*) the provision of adequate nutrition, housing and facilities for recreation and culture;

(*j*) the assurance of equality of educational and vocational opportunity.

IV

Confident that the fuller and broader utilization of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations, to promote

the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full co-operation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

V

The Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world.

TREATY OF ALLIANCE BETWEEN GREAT BRITAIN AND THE U.S.S.R.

(May 26th, 1942)

Treaty of alliance in the war against Hitlerite Germany and her associates in Europe and of collaboration and mutual assistance thereafter between the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland.

His Majesty The King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, and the Presidium of the Supreme Council of the Union of Soviet Socialist Republics ;

Desiring to confirm the stipulations of the Agreement between His Majesty's Government in the United Kingdom and the Government of the Union of Soviet Socialist Republics for joint action in the war against Germany, signed at Moscow on July 12th, 1941, and to replace them by a formal treaty;

Desiring to contribute after the war to the maintenance of peace and to the prevention of further aggression by Germany or the States associated with her in acts of aggression in Europe;

Desiring, moreover, to give expression to their intention to collaborate closely with one another as well as with the other United Nations at the peace settlement and during the ensuing period of reconstruction on the basis of the principles enunciated in the declaration made on August 14th, 1941, by the President of the United States of America and the Prime Minister of Great Britain, to which the Government of the Union of Soviet Socialist Republics has adhered;

Desiring, finally, to provide for mutual assistance in

the event of an attack upon either High Contracting Party by Germany or any of the States associated with her in acts of aggression in Europe,

Have decided to conclude a treaty for that purpose and have . . . agreed as follows :—

Part I

Article 1

In virtue of the alliance established between the United Kingdom and the Union of Soviet Socialist Republics, the High Contracting Parties mutually undertake to afford one another military and other assistance and support of all kinds in the war against Germany and all those States which are associated with her in acts of aggression in Europe.

Article 2

The High Contracting Parties undertake not to enter into any negotiations with the Hitlerite Government or any other Government in Germany that does not clearly renounce all aggressive intentions, and not to negotiate or conclude except by mutual consent any armistice or peace treaty with Germany or any other State associated with her in acts of aggression in Europe.

Part II

Article 3

(1) The High Contracting Parties declare their desire to unite with other like-minded States in adopting proposals for common action to preserve peace and resist aggression in the post-war period.

(2) Pending the adoption of such proposals, they will after the termination of hostilities take all the measures in their power to render impossible a repetition of aggression and violation of the peace by Germany or any of the States associated with her in acts of aggression in Europe.

Article 4

Should one of the High Contracting Parties during the post-war period become involved in hostilities with Germany or any of the States mentioned in Article 3 (2) in consequence of an attack by that State against that Party, the other High Contracting Party will at once give to the Contracting Party so involved in hostilities all the military and other support and assistance in his power.

This Article shall remain in force until the High Contracting Parties, by mutual agreement, shall recognize that it is superseded by the adoption of the proposals contemplated in Article 3 (1). In default of the adoption of such proposals, it shall remain in force for a period of twenty years, and thereafter until terminated by either High Contracting Party, as provided in Article 8.

Article 5

The High Contracting Parties, having regard to the interests of the security of each of them, agree to work together in close and friendly collaboration after the re-establishment of peace for the organization of security and economic prosperity in Europe. They will take into account the interests of the United Nations in these objects, and they will act in accordance with the two principles of not seeking territorial aggrandizement for themselves and of non-interference in the internal affairs of other States.

Article 6

The High Contracting Parties agree to render one another all possible economic assistance after the war.

Article 7

Each High Contracting Party undertakes not to conclude any alliance and not to take part in any coalition directed against the other High Contracting Party.

Article 8

The present treaty is subject to ratification in the shortest possible time, and the instruments of ratification shall be exchanged in Moscow as soon as possible.

It comes into force immediately on the exchange of the instruments of ratification, and shall thereupon replace the agreement between the Governments of the Union of Soviet Socialist Republics and his Majesty's Government in the United Kingdom, signed at Moscow on July 12th, 1941.

Part I of the present treaty shall remain in force until the re-establishment of peace between the High Contracting Parties and Germany and the Powers associated with her in acts of aggression in Europe.

Part II of the present treaty shall remain in force for a period of 20 years. Thereafter, unless 12 months' notice has been given by either party to terminate the treaty at the end of the said period of 20 years, it shall continue in force until 12 months after either High Contracting Party shall have given notice to the other in writing of his intention to terminate it.

ARTICLE 7 OF THE LEND-LEASE AGREEMENT BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

(February 23rd, 1942)

In the final determination of the benefits to be provided to the United States of America by the Government of the United Kingdom in return for aid furnished under the Act of Congress of March 11th, 1941, the terms and conditions thereof shall be such as not to burden commerce between the two countries, but to promote mutually advantageous economic relations between them and the betterment of worldwide economic relations. To that end, they shall include provision for agreed action by the United States of America and the United Kingdom, open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods, which are the material foundations of the liberty and welfare of all peoples; to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers; and, in general, to the attainment of all the economic objectives set forth in the Joint Declaration made on August 12th, 1941, by the President of the United States of America and the Prime Minister of the United Kingdom.

THE ATOMIC CHARTER

(November 15th, 1945)

The President of the United States, the Prime Minister of the United Kingdom, and the Prime Minister of Canada have issued the following statement :—

1. We recognize that the application of recent scientific discoveries to the methods and practice of war has placed at the disposal of mankind means of destruction hitherto unknown, against which there can be no adequate military defence, and in the employment of which no single nation can in fact have a monopoly.

2. We desire to emphasize that the responsibility for devising means to ·nsure that the new discoveries shall be used for the benefit of mankind, instead of as a means of destruction, rests not on our nations alone, but upon the whole civilized world. Nevertheless, the progress that we have made in the development and use of atomic energy demands that we take an initiative in the matter, and we have accordingly met together to consider the possibility of international action—

(*a*) To prevent the use of atomic energy for destructive purposes.

(*b*) To promote the use of recent and future advances in scientific knowledge, particularly in the utilization of atomic energy, for peaceful and humanitarian ends.

3. We are aware that the only complete protection for the civilized world from the destructive use of scientific knowledge lies in the prevention of war. No system of safeguards that can be devised will of itself provide an effective guarantee against production of atomic weapons by a nation bent on aggression, particularly since the military exploitation of atomic energy, depends, in large

part, upon the same weapons and processes as would be required for industrial uses. Nor can we ignore the possibility of the development of other methods or of new methods of warfare, which may constitute as great a threat to civilization as the military use of atomic energy.

4. Representing, as we do, the three countries which possess the knowledge essential to the use of atomic energy, we declare at the outset our willingness, as a first contribution, to proceed with the exchange of fundamental scientific information; and the interchange of scientists and scientific literature for peaceful ends with any nation that will fully reciprocate.

5. We believe that the fruits of scientific research should be made available to all nations, and that freedom of investigation and free interchange of ideas are essential to the progress of knowledge. In pursuance of this policy, the basic scientific information essential to the development of atomic energy for peaceful purposes has already been made available to the world. It is our intention that all further information of this character that may become available from time to time shall be similarly treated. We trust that other nations will adopt the same policy, thereby creating an atmosphere of reciprocal confidence in which political agreement and co-operation will flourish.

6. We have considered the question of the disclosure of detailed information concerning the practical industrial application of atomic energy. The military exploitation of atomic energy depends, in large part, upon the same methods and processes as would be required for industrial uses. We are not convinced that the spreading of the specialized information regarding the practical application of atomic energy, before it is possible to devise effective, reciprocal, and enforceable safeguards acceptable to all nations, would contribute to a constructive solution of the problem of the atomic bomb. On the

contrary we think it might have the opposite effect. We are, however, prepared to share, on a reciprocal basis with other of the United Nations, detailed information concerning the practical industrial application of atomic energy just as soon as effective enforceable safeguards against its use for destructive purposes can be devised.

7. In order to attain the most effective means of entirely eliminating the use of atomic energy for destructive purposes and promoting its widest use for industrial and humanitarian purposes, we are of the opinion that at the earliest practicable date a Commission should be set up under the United Nations, to prepare recommendations for submission to the organization. The Commission should be instructed to proceed with the utmost despatch and should be authorized to submit recommendations from time to time dealing with separate phases of its work.

In particular, the Commission should make specific proposals :—

(*a*) For extending between all nations the exchange of basic scientific information for peaceful ends.

(*b*) For control of atomic energy to the extent necessary to ensure its use only for peaceful purposes.

(*c*) For the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.

(*d*) For effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.

8. The work of the Commission should proceed by separate stages, the successful completion of each of which will develop the necessary confidence of the world before the next stage is undertaken. Specifically, it is considered that the Commission might well devote its attention first to the wide exchange of scientists and scientific information, and as a second stage to the

development of full knowledge concerning natural resources of raw materials.

9. Faced with the terrible realities of the application of science to destruction, every nation will realize more urgently than before the overwhelming need to maintain the rule of law among nations and to banish the scourge of war from the earth. This can only be brought about by giving wholehearted support to the United Nations organization, and by consolidating and extending its authority, thus creating conditions of mutual trust in which all peoples will be free to devote themselves to the arts of peace. It is our firm resolve to work without reservation to achieve these ends.

INDEX

THE LIBRARY OF WORLD AFFAIRS

No. 1.

Making International Law Work

By GEORGE W. KEETON and G. SCHWARZENBERGER.

Second edition revised and re-written. 12/6

No. 2.

China Moulded by Confucius

The Chinese Way in Western Light

By DR. F. T. CHENG. Illustrated, 18/-

Other Titles in Preparation.

THE YEAR BOOK OF WORLD AFFAIRS

Edited by GEORGE W. KEETON and G. SCHWARZENBERGER.

Annually in November. About 25/-

CONTENTS OF THE VOLUME FOR 1947

In addition, the Year Book will contain reports on important books on the sociological, economic, geographic, educational, psychological, and legal aspects of world affairs.

OTHER PUBLICATIONS OF THE LONDON INSTITUTE OF WORLD AFFAIRS

THE PATH TO PEACE
Contributions by Air Vice-Marshal D. Bennett, Sir Cecil J. B. Hurst, Professor A. L. Goodhart, Hector A. Munro, Professor Norman Bentwich, Viscount Finlay, Professor G. W. Keeton, Professor Henri Rolin, Viscount Maugham, J. M. Spaight, Lewis Watt, J. M. Lightwood, Charles Reith, Professor H. Lauterpacht, Group-Captain R. E. G. Fulljames and Dr. G. Schwarzenberger. Price 7s. 6d.

A PLAN FOR THE ORGANIZATION OF A EUROPEAN AIR SERVICE
By Rear-Admiral R. N. Lawson, C.B. 2s. 6d.

JUSTICE AND EQUITY IN THE INTERNATIONAL SPHERE
By Professors Norman Bentwich, A. S. de Bustamante, Donald A. McLean, Gustav Radbruch and H. A. Smith. 4s. 6d.

LEGAL MACHINERY FOR PEACEFUL CHANGE
By Professor Karl Strupp, Member of the Institute of International Law. 4s. 6d.

THE CONTRIBUTION OF ENGLISH EQUITY TO THE IDEA OF AN INTERNATIONAL EQUITY TRIBUNAL
By Dr. W. Friedmann. 4s. 6d.

THE LEAGUE OF NATIONS AND WORLD ORDER
A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations.
By Dr. Georg Schwarzenberger. 6s.

THE POWER OF THE INTERNATIONAL JUDGE TO GIVE A DECISION *EX AEQUO ET BONO*.
By Dr. Max Habicht. 4s. 6d.

WILLIAM LADD: AN EXAMINATION OF AN AMERICAN PROPOSAL FOR AN INTERNATIONAL EQUITY TRIBUNAL
By Dr. Georg Schwarzenberger. Second Edition. 4s. 6d.

Published under the Auspices of
THE LONDON INSTITUTE OF WORLD AFFAIRS

STEVENS & SONS LIMITED
119 & 120 CHANCERY LANE LONDON W.C.2
TELEPHONE: HOLborn 1545-6

THE LONDON INSTITUTE OF WORLD AFFAIRS

FOUNDED 1934

Temporary Address: BARROWS, ROYDON, Nr. WARE, HERTS.

THE LONDON INSTITUTE OF WORLD AFFAIRS

THE OBJECT of The London Institute of World Affairs is the promotion of education in world problems for the purpose of creating an informed and balanced public opinion. The Institute seeks to achieve its object by publications, and by the promotion of conferences, lectures, discussion groups and research upon the main problems of the present time. It is an unofficial body with an international membership, and its activities are financed mainly by the subscriptions and donations of members. It wishes to secure at the present time a widely extended membership amongst ordinary men and women.

The minimum subscription is One Guinea per annum.

Members receive *The London Quarterly of World Affairs* without charge, and are entitled to purchase other publications of the Institute at reduced prices. They may also attend all lectures and conferences organized by the Institute for a reduced fee.

The Institute is raising a Building Fund of £15,000 for the purchase of adequate headquarters in London. Will you help us to achieve this aim?

All communications relating to the Institute should be addressed to:

THE PRINCIPAL,
THE LONDON INSTITUTE OF WORLD AFFAIRS
(*Temporary address*) Barrows, Roydon, Nr. Ware, Herts.

LECTURE PROGRAMME OF THE LONDON INSTITUTE OF WORLD AFFAIRS

The Institute undertakes full teaching for the Diploma in International Affairs of the University of London, and in addition organizes courses of lectures and classes on all aspects of world affairs. For full particulars write to the Acting Secretary.